

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
MATRIX CONSULTING GROUP LTD**

THIS AGREEMENT is made and entered into this 22 day of February, 2016 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and MATRIX CONSULTING GROUP LTD, a CA Limited Corporation ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor for contract fiscal review in compliance with SB331: Civic Reporting Openness in Negotiations Efficiency Act, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the Consultant's Proposal (the "Proposal"), attached hereto as Exhibit "A," and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City's Chief Executive Officer ("City CEO") or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the

matters of concern;

- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the Consultant's Proposal set forth in "Exhibit A," attached hereto and made a part of this Agreement (the "Consultant's Proposal"). Consultant's total compensation for the 1-year term (Section 4.1) shall not exceed Thirty-Thousand Dollars (\$30,000.00 USD) per annum.

2.2. Additional Services. Consultant shall not receive compensation for any services

provided outside the scope of services specified in the Consultant's Proposal unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of 12 months, ending on February 21, 2017, unless previously terminated as provided herein or as otherwise agreed to in writing by the Parties. City shall have the sole option to extend this Agreement for four (4) additional one (1) year periods.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually

rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."

- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City CEO or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with

Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Matrix Consulting Group, LTD
201 San Antonio Circle, Ste. 148
Mountain View, CA 94040
Tel: (650) 858-0507
Fax: (650) 917-2310
Attn: Richard Brady

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5241
Fax: (714) 754-5040
Attn: Steve Dunivent

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "C" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at

Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to

any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.21. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.22. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.23. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.24. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall

constitute one agreement.

6.27. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[Signatures begin on Page 11]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

[Redacted Signature]

Chief Executive Officer

Date: 3/1/16

CONSULTANT

[Redacted Signature]

Signature

Richard Brady, President

Name and Title

[Redacted Signature]

Social Security or Taxpayer ID Number

Date: 02/22/2016

ATTEST:

[Redacted Signature]

City Clerk

APPROVED AS TO FORM:

[Redacted Signature]

City Attorney

Date: 02/29/16

APPROVED AS TO INSURANCE:

[Redacted Signature]

Risk Management

Date: 2.26.16

APPROVED AS TO CONTENT AND TRANSACTION:

[Redacted Signature]

Interim Finance Director

Date: 2.24.16

**EXHIBIT A
CONSULTANT'S PROPOSAL**



**CITY OF COSTA MESA
CALIFORNIA
REQUEST FOR QUOTATION**

**This is not an order
QUOTE NUMBER**

C00465-02

INSTRUCTIONS:

1. Read terms and conditions on reverse side.
2. Quotation must be on this form.
3. Complete and sign all pages of the quotation.
4. Return this form plus all Attachments.
5. Quote on each item separately; all or none bids may not be accepted unless otherwise specified.
6. Price alone may not be the final determining factor.
7. Declination - in the event you elect not to quote, please inform us on this form and return by the bid due date indicated.
8. Out of state vendors must include California sales tax permit number.

Date: January 19, 2016

TO

Interested Bidder

BIDS WILL BE RECEIVED UNTIL
10:00 A.M. February 2, 2016
AT THE PURCHASING DIVISION
 77 FAIR DRIVE
 P.O. BOX 1200
 COSTA MESA, CA 92628-1200
 (714) 754-5310
VENDOR MAY FAX BID TO (714) 754-5040
VENDOR MAY EMAIL BID TO
 jennifer.mccoy@costamesaca.gov

QUOTATIONS ARE REQUESTED FOR FURNISHING THE ITEMS DESCRIBED HEREIN IN ACCORDANCE WITH STATED TERMS AND CONDITIONS.

ALL QUOTATIONS MUST BE F.O.B. DESTINATION AND INCLUDE COST OF BOXING AND CARTAGE TO DELIVERY POINT STATED BELOW. BID PRICES ARE TO INCLUDE ANY FREIGHT AND DELIVERY CHARGES.

QUOTE YOUR MOST COMPETITIVE PRICES

FOR: FISCAL REVIEWS PER SB-331 ANNUAL CONTRACT

CONTACT PERSON: Jennifer McCoy (714) 754-5310

VENDOR IS REQUIRED TO PROVIDE A COMPLETED MSDS (MATERIAL SAFETY DATA SHEET) FOR HAZARDOUS SUBSTANCES AS REQUIRED BY LABOR CODE SECTION 6390, GENERAL INDUSTRIAL SAFETY ORDER; SECTION 5194 AND CALIF. ADMINIS. CODE TITLE 8. MSDS SHEET FOR EACH SPECIFIED ITEM SHALL BE SENT TO PLACE OF SHIPMENT, AND A COPY SENT TO THE PURCHASING DIVISION.

**THE CITY OF COSTA MESA RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.
LOWEST QUALIFIED BID MAY BE SUBJECT TO FURTHER NEGOTIATIONS.**

THE CITY OF COSTA MESA WILL ACCEPT CASH DISCOUNTS FOR PROMPT PAYMENT OF INVOICES IF THE LONGER TERM OFFERED IS FOR TWENTY (20) WORKING DAYS OR LONGER.

TERMS 0 % 30 DAYS

PLEASE QUOTE YOUR BEST DELIVERY IN CALENDAR DAYS: 10 Days

The undersigned, as bidder, declares that all documents regarding this bid have been examined and accepted and that, if awarded, will enter into a price agreement with the city of Costa Mesa.

Matrix Consulting Group, Ltd.
 Company name as it appears on your invoices

201 San Antonio Circle, Suite 148
 Address

Mountain View CA 94040
 City State Zip

[Redacted] President
 Authorized Signature Title

[Redacted] 2/1/2016
 Federal ID Number Date

RETAIN ONE COPY FOR YOUR FILES

ALL QUOTATIONS MUST BE SIGNED

SCOPE OF SERVICES

The City of Costa Mesa is requesting quotes for an annual contract with 4-1 year renewal options for a professional services agreement for contract fiscal review in compliance with SB-331: Civic Reporting Openness in Negotiations Efficiency Act.

Contractor shall be familiar with the provisions of SB-331 (attached).

For contracts the City determines are covered by SB-331, City shall request Contractor to perform the following work as outlined in SB-331 Section 22178 parts (b) through (b) (3):

(b) The city, county, city and county, or special district shall designate an unbiased independent auditor to review the cost of any proposed contract. The independent auditor shall prepare a report on the cost of the contract and provide the report to all parties and make it available to the public before the governing body takes any action to approve or disapprove the contract. The report shall comply with the following:

(1) The report shall include a recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to each term and condition of the contract.

(2) The report shall be made available to the public at least 30 days before the issue can be heard before the governing body and at least 60 days before any action to approve or disapprove the contract by the governing body.

(3) Any proposed changes to the contract after it has been approved by the governing body shall adhere to the same approval requirements as the original contract. The changes shall not go into effect until all of the requirements of this subdivision are met. City will coordinate with contractor the issuance dates based on the anticipated City Council meeting dates.

City projects that up to 30 reviews would be required on an annual basis.

Regarding implementation of SB 331 (AKA Public Contract Code 22175-22178) and in reply to the potential consultants request for our detailed expectations/scope of work, please see the following.

1. City will determine what contracts qualify for the SB 331 external review process. Consultant shall concur with the determination on any contracts that are provided for review. If there is a disagreement, City and Consultant will discuss the reasons and work to resolve any disagreement on qualification.
2. Review the cost of any proposed contract. The independent auditor shall prepare a report on the cost of the contract and provide the report to all parties. In order to expedite the process, The City staff will prepare the initial report as described and provide it to the consultant for review, comments and approval. The report will include the necessary information for the consultant to assess the accuracy of the report's facts, statements and conclusions. Consultant will have 1-2 weeks for review of basic reports. A longer review period may be agreed to for more complex reports on a case by case basis. Consultant will provide written response on their suggested changes, if any, and their approval of the report.
3. The report shall include a recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to each term and condition of the contract. City staff will include a determination of viability and the basis for the determination in the initial report that is reviewed and approved by the consultant.
4. Once the report is complete, edited as necessary as recommended by the consultant and approved by consultant, City staff will make it available to the public before the governing body takes any action to approve or disapprove the contract.
5. The City staff shall make the report available by the City to the public at least 30 days before the issue can be heard before the governing body and at least 60 days before any action to approve or disapprove the contract by the governing body.
6. Any proposed changes to the contract after it has been approved by the governing body shall adhere to the same approval requirements as the original contract. The changes shall not go into effect until all of the requirements of this subdivision are met. The same process described above will also apply to proposed changes to contracts.
7. At this time, it is believed that labor negotiations and the resulting MOUs that result are not subject to the provisions of SB 331.

Senate Bill No. 331

CHAPTER 714

An act to add Chapter 4.5 (commencing with Section 22175) to Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

[Approved by Governor October 9, 2015. Filed with Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 331, Mendoza. Public contracts: local agencies: negotiations.

Existing law relating to public contracts requires local agencies, including cities and counties, to comply with specified procedures for public contracting for public construction.

The Meyers-Millas-Brown Act requires the governing body of a local public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of a recognized employee organization.

This bill would enact the Civic Reporting Openness In Negotiations Efficiency Act to establish specific procedures for the negotiation and approval of certain contracts valued at \$250,000 or more for goods or services by cities, counties, cities and counties, or special districts that have adopted a civic openness in negotiations ordinance, or COIN ordinance, defined as an ordinance imposing specified requirements as part of any collective bargaining process undertaken pursuant to the Meyers-Millas-Brown Act. The act would require the designation of an independent auditor to review and report on the cost of any proposed contract. The act would require a city, county, city and county, or special district to disclose prescribed information relating to the contract and contract negotiations on its Internet Web site. The act would prohibit a final determination by the governing body regarding approval of any contract until the matter has been heard at a minimum of 2 public meetings of the governing body.

The act would exempt from its provisions contracts required to respond to, recover from, or mitigate the effects of a temporary public safety emergency declared by the chief law enforcement officer of a city, county, city and county, or special district, or a state of war emergency, state of emergency, or local emergency, as those terms are defined in the California Emergency Services Act. The act would also exempt from its provisions a renewal of a contract if the employees performing the services are covered by a collective bargaining agreement that is governed by the National Labor Relations Act.

By imposing new requirements on cities, counties, cities and counties, and special districts, this bill would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1.

Chapter 4.5 (commencing with Section 22175) is added to Part 3 of Division 2 of the *Public Contract Code*, to read:

CHAPTER 4.5. CIVIC OPENNESS IN NEGOTIATIONS

22175.

This chapter shall be known, and may be cited, as the Civic Reporting Openness in Negotiations Efficiency Act, or CRONEY.

22176.

As used in this chapter, "civic openness in negotiations ordinance" or "COIN ordinance" means an ordinance adopted by a city, county, city and county, or special district that requires any of the following as a part of any collective bargaining process undertaken pursuant to the Meyers-Millias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code):

- (a) The preparation of an independent economic analysis describing the fiscal costs of benefit and pay components currently provided to members of a recognized employee organization, as defined in Section 3501 of the Government Code.
- (b) The completion of the independent economic analysis prior to the presentation of an opening proposal by the public employer.
- (c) Availability for review by the public of the independent economic analysis before presentation of an opening proposal by the public employer.
- (d) Updating of the independent economic analysis to reflect the annual or cumulative costs of each proposal made by the public employer or recognized employee organization.
- (e) Updating of the independent economic analysis to reflect any absolute amount or change from the current actuarially computed unfunded liability associated with the pension or postretirement health benefits.
- (f) The report from a closed session of a meeting of the public employer's governing body of offers, counteroffers, or proposals made by the public employer or the recognized employee organization and communicated during that closed session.
- (g) The report from a closed session of a meeting of the public employer's governing body of any list of names of persons in attendance during any negotiations session, the date of the session, the length of the session, the location of the session, or pertinent facts regarding the negotiations that occurred during a session.

22177.

(a) This chapter applies only to a city, county, city and county, or special district that has adopted a COIN ordinance, which is effective and operative. This chapter shall not apply if the city, county, city and county, or special district suspends, repeals, or revokes its COIN ordinance.

(b) This chapter shall not apply to a contract if the contract is required to respond to, recover from, or mitigate the effects of any of the following:

- (1) A temporary public safety emergency declared by the chief law enforcement officer of a city, county, city and county, or special district.
- (2) A state of war emergency, state of emergency, or local emergency, as those terms are defined in Section 8558 of the Government Code.

(c) This chapter shall not apply to a renewal of a contract if the employees performing the services are covered by a collective bargaining agreement that is governed by the National Labor Relations Act (29 U.S.C. Sec. 151 et seq.).

22178.

(a) This chapter shall apply to any contracts with a value of at least two hundred fifty thousand dollars (\$250,000), and to any contracts with a person or entity, or related person or entity, with a cumulative value of at least two hundred fifty thousand dollars (\$250,000) within the fiscal year of the city, county, city and county, or special district, being negotiated between the city, county, city and county, or special district, and any person or entity that seeks to provide services or goods to the city, county, city and county, or special district, in the following areas: accounting, financing, hardware and

software maintenance, health care, human resources, human services, information technology, telecommunications, janitorial maintenance, legal services, lobbying, marketing, office equipment maintenance, passenger vehicle maintenance, property leasing, public relations, public safety, social services, transportation, or waste removal.

(b) The city, county, city and county, or special district shall designate an unbiased independent auditor to review the cost of any proposed contract. The independent auditor shall prepare a report on the cost of the contract and provide the report to all parties and make it available to the public before the governing body takes any action to approve or disapprove the contract. The report shall comply with the following:

(1) The report shall include a recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to each term and condition of the contract.

(2) The report shall be made available to the public at least 30 days before the issue can be heard before the governing body and at least 60 days before any action to approve or disapprove the contract by the governing body.

(3) Any proposed changes to the contract after it has been approved by the governing body shall adhere to the same approval requirements as the original contract. The changes shall not go into effect until all of the requirements of this subdivision are met.

(c) The city, county, city and county, or special district shall disclose all offers and counteroffers to the public within 24 hours on its Internet Web site.

(d) Before approving any contract, the city, county, city and county, or special district shall release a list of names of all persons in attendance, whether in person or by electronic means, during any negotiation session regarding the contract, the date of the session, the length of the session, the location where the session took place, and any pertinent facts regarding the negotiations that occurred in that session.

(e) Representatives of the governing body shall advise the governing body of all offers, counteroffers, information, or statements of position discussed by the contracting person or entity and city, county, city and county, or special district representatives participating in negotiations regarding any contract.

(f) Each governing body member and staff members of governing body offices shall disclose publicly all verbal, written, electronic, or other communications regarding a subject matter related to the negotiations or pending negotiations they have had with any official or unofficial representative of the private entity within 24 hours after the communication occurs.

(g) A final governing body determination regarding approval of any contract shall be undertaken only after the matter has been heard at a minimum of two meetings of the governing body wherein the public has had the opportunity to review and comment on the matter.

SEC. 2.

The Legislature finds and declares that Section 1 of this act, which adds Chapter 4.5 (commencing with Section 22175) to Part 3 of Division 2 of the Public Contract Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act ensures that members of the public have the opportunity to be informed of, and meaningfully participate in, the negotiation and approval of contracts for goods and services by a city, county, city and county, or special district that has adopted a civic openness in negotiations (COIN) ordinance, thereby furthering the purposes of Section 3 of Article I of the California Constitution.

SEC. 3.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the

scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

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92

RFQ C00465-02 FISCAL REVIEWS PER SB-331 ANNUAL CONTRACT

HOURLY RATE: \$ 175

Bidder acknowledges by signing below that bidder has read, understands, and agrees to the conditions contained herein and on all of the attachments and addenda.

TO THE CITY OF COSTA MESA:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Bids which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

Matrix Consulting Group, Ltd.

Company Name

201 San Antonio Circle, Suite 108

Address

Mountain View CA 94040

City State Zip



Signature of Person Authorized to Sign

Richard P. Brady

Printed Name

President

Title

Name: Richard Brady

Title: President

Phone: 650-858-0507

Fax: 650-917-2310

E-mail: rbrady@matrixcg.net