CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
VISION TECHNOLOGY SOLUTIONS, LLC

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 15th day of February, 2017 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and VISION TECHNOLOGY SOLUTIONS, LLC, a Delaware limited liability company registered to do business in California ("Consultant").

W I T N E S S E T H :

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor for website development and content management services, 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" 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 Scope of Services, 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 Manager 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, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, 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, except that Consultant may assign this Agreement without City's consent to an "Affiliate" of Consultant or in connection with an acquisition of Consultant, merger (whether Consultant is the surviving or disappearing entity) or consolidation of Consultant with another entity, or in connection with the sale, assignment, or majority transfer of any stock, membership or other ownership interest in Consultant. As used herein, "Affiliate" shall mean a domestic entity formed, existing and governed pursuant to the laws of one of the fifty (50) states of the United States of America (or the District of Columbia) controlling, controlled by, or under common control with Consultant. In the event Consultant assigns or delegates this Agreement to an Affiliate, Consultant shall provide immediate written notice to City of such assignment or delegation. 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.

(a) Consultant's Confidential Information. As used in this Agreement, the term "Consultant's Confidential Information" means (a) proprietary information of Consultant, (b) information marked or designated by Consultant as confidential, (c) information, whether or not in written form and whether or not designated as confidential, that is known to the City as being treated by Consultant as confidential, or (d) information provided to Consultant by third parties that Consultant is obligated to keep confidential. Consultant's Confidential Information includes, but is not limited to, all files, writings and documents, recordings, including without limitation all information contained therein, all extractions, notes, compilations and summaries prepared or derived therefrom, copyrights, trademarks, service marks, patents, trade secrets, programs, source code, object code, demos, demonstrations (whether in written, oral, graphic, encoded, encrypted, tangible, or intangible forms, in any media whatsoever) including without limitation demonstrations, know-how, techniques, designs, specifications, drawings, compilations, diagrams, models, samples, flow charts, computer programs, and codes. To the extent permitted by law, Consultant's Confidential Information shall be treated as confidential and shall not be disclosed to parties other than representatives of City and the authorized representatives of City, and shall be used only in furtherance of the services provided under this Agreement.

1.9 Ownership; Limited Licensing of Intellectual Property

(a) Consultant's Designs. Upon payment in full of the website development fees as set forth in Part I of the Scope of Services, Consultant grants a non-exclusive, non-transferrable, and perpetual license for City to reproduce, modify or create derivative works for its own use, public display, and use any and all of Consultant's copyrights in the homepage layout wireframe, sitemap, draft homepage design concept(s) interior page layouts (collectively, the "Consultant Designs") embodied in City's website, which are prepared or caused to be prepared by Consultant under this Agreement. The Consultant Designs provided under this Agreement is licensed and not sold. City understands and agrees that the Consultant Designs as a whole is an original work of authorship by Consultant and that Consultant shall retain all rights, title, and interests therein. Consultant retains its right to use any web pages developed for the City in any of its own promotional materials as examples of its work.

(b) Consultant's Vision Content Management System™. Consultant also grants a limited, non-exclusive, and non-transferrable license for City to use the Vision Content Management System™ (also known as the Vision Internet Content Management System, VCMT, VCMS and the Vision Content Management Tool, collectively, the "VCMS"), and Dynamic and Interactive Components of the VCMS to the extent necessary for the City's use and operation of its website; provided, City does not (1)(a) modify the VCMS, or (1)(b) use the VCMS in combination with any third-party system not authorized by Contractor, and (2) maintains a visionLive™ Subscription in accordance with the Scope of Services. The VCMS provided under this Agreement is licensed and not sold, and City understands and

agrees that Consultant shall retain all rights, title, and interests in the VCMS, Dynamic and Interactive Components, and any other Consultant intellectual property not provided for in this section.

(c) Limited Warranty. Consultant warrants that the deliverables set forth in the Part I of the Scope of Services will be conveyed to City upon transfer of the website to the production server with a public Internet Protocol address ("Completion"). All programming code developed by Consultant within Part I of the Scope of Services is warranted to be free of any material errors or bugs that prevent the code from performing as originally intended ("Warranted Problem"); provided, however, City does not (1)(a) modify the VCMS or (1)(b) use the VCMS in combination with any third-party system not authorized by Consultant, and (2) maintains a visionLive™ subscription in accordance with this Agreement. In the event of breach of the limited warranty in this Section, City's sole remedy and Consultant's entire liability shall be limited to Consultant's correction of the Warranted Problem. Except as expressly set forth above, CONSULTANT MAKES NO GUARANTEE OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING OF MERCHANTABILITY OR FITNESS OF THE SERVICES FOR A PARTICULAR PURPOSE WHATSOEVER, AND USE OF THE SERVICES OR ANY INFORMATION THAT MAY BE OBTAINED THERE FROM IS AT CITY'S OWN RISK AS THE SERVICES ARE PROVIDED TO CITY ON AN "AS IS" BASIS. In no event, at any time, shall the aggregate liability of Consultant under this Agreement or otherwise exceed the amount of fees paid by City to Consultant in the most recent twelve months, and Consultant shall not be responsible for any lost profits or other damages, including direct, indirect, incidental, special, consequential or any other damages, however caused. Consultant does not warrant any connection to, transmission over, nor results of use of, any network connection or facilities provided, nor any third-party applications and software obtained by, for, or on behalf of City. Consultant assumes no responsibility for any damages suffered by the City, including, but not limited to, server down time, loss of data, loss of business, mis-deliveries, delays, non-deliveries, access speed, or service interruptions of any kind. City acknowledges that the information available through the interconnecting networks may not be accurate. Consultant has no ability or authority over the material. In addition, Consultant has no liability for the quality, accuracy, or validity of the data/information gathered from the Internet. Use of information gathered through the use of Consultant's services is at the risk of the City.

(d) Rights Regarding Content. Each party warrants that it holds all rights and/or licenses necessary to display all of the images, data, information or other items supplied by such party and being displayed on the City's web pages during the effective period of this Agreement. Consultant agrees that City will retain ownership of all information and content (including City provided logos and images) owned exclusively by City and provided by City for use on its website. City shall supply all necessary information to Consultant in a timely manner in digital format including without limitation copy, text, audio files, video files, portable document format (PDF) files, photographs, artwork and preexisting graphics. Consultant is not responsible for content migrated by City or any third party. City expressly authorizes Consultant to display and/or modify any City supplied images, data, information and other items in connection with the services provided herein.

(e) Consultant's Mark. City agrees that Consultant may place in the website footer an unobtrusive text link reading "Created by Vision" or the equivalent. Consultant's footer text credit shall always be linked to a Consultant web page.

(f) Intellectual Property Indemnification. Consultant represents and warrants that its services and/or products do not infringe on any copyright, trademark, patent, trade secret or other proprietary rights of any third party. Consultant agrees to defend, indemnify and hold free and harmless City, its agents, officers, representatives and employees from and against any and all liability for any and all claims by third parties that Consultant's services and/or products infringe any intellectual property right, or misappropriates any trade secret. Notwithstanding the foregoing, Consultant shall have no defense or indemnity obligations for intellectual property modified by a party other than Consultant, for intellectual property modified in accordance with City's specifications or instructions, or claims of infringement based on City's other products or other third-party products.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit A. Consultant's total annual compensation for the first year of this Agreement shall not exceed Twenty-Seven Thousand Thirty Dollars ($27,030.00). Thereafter, Consultant's total annual compensation shall not exceed Ten Thousand Dollars ($10,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the Scope of Services, 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 will submit invoices to the City as set forth in Exhibit A, and City will pay Consultant within thirty (30) days from the date City receives the invoice. 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 from the Effective Date until three (3) years after termination of this Agreement.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. Unless otherwise agreed upon in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Actual time for performance will vary depending on City interaction and participation. However, the parties agree to reasonably cooperate with one another in all respects including the development and design of the website in a timely manner.

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 five (5) years, ending on February 14, 2022, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by two (2) additional one (1) year periods upon mutual written agreement of both parties.

4.2. Termination.

(a) Termination for Cause. 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 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.

(b) Termination for Convenience. Following the first year of this Agreement, City may terminate the Subscription Services and/or Additional Services of the Consultant for convenience by providing written notice to Consultant thirty (30) calendar days prior to the beginning of the next year of the Agreement. In the event of termination of Subscription Services for the City's convenience, City shall not be entitled to a refund of any amounts already paid to Consultant by 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 design or drawings, 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.

(d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

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 Manager 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 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, and (b) 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:

Vision Technology Solutions, LLC
222 N. Sepulveda Blvd., Ste. 1500
El Segundo, CA 90245
Tel: (310) 656-3103
Attn: Contracts

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5098
Attn: Dane Bora

Courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Dept. | Purchasing

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. Except as set forth herein, 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 agents 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. 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.

6.14. 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.

6.15. 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.

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

6.17. 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.

6.18. 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.

6.19. 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.

6.20. 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.

6.21. 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.

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

6.23. 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.

6.24. 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.

6.25. 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.

6.26. 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.

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.

CONSULTANT

Signature

Date: _____

DAVID NACHMAN - CEO
[Name and Title]

47-1489621
Social Security or Taxpayer ID Number

CITY OF COSTA MESA

Thomas Hatch
City Manager

Date: 3/2/17

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Thomas Duarte
City Attorney

Date: 3/1/17

APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management

Date: 2/24/17

APPROVED AS TO CONTENT:

Dane Bora — Date: 2-27-17

Dane Bora
Project Manager

DEPARTMENTAL APPROVAL:

Tamara S Letourneau — Date: 3/1/17

Tamara Letourneau
Assistant City Manager

APPROVED AS TO PURCHASING:

Stephen Dunivent — Date: 2.27.17

Stephen Dunivent
Interim Finance Director

EXHIBIT A

SCOPE OF SERVICES

PART I – Website Development Services

Included Services

Pursuant to the terms herein, Consultant agrees to provide website development services as provided below in exchange for payment of fees and compliance with the terms and conditions of the Scope of Services and the Agreement. Website development services include the following:

Navigation and Graphic Design.

The Consultant will consult with City on how to organize City website content. Based on this consultation, the Consultant will create a custom content migration script to move the content to its new location on the upgraded website, and Consultant will assist in transferring existing content into the new design. The Consultant will then provide City with one draft homepage design concept via City-accessible software or as an email attachment ("Delivery"). The Consultant will revise the homepage design concept. After City reviews the final homepage design concept, the Consultant will provide three interior page designs per standard layouts available through Consultant's template builder and Vision Content Management System™ (also known as the Vision Internet Content Management System, VCMT, VCMS and the Vision Content Management Tool, collectively, the "VCMS") widget requirements. The Consultant will deliver the following:

- Custom content migration script
- One homepage design concept
- Approved homepage design
- Up to three interior page templates

Responsive Website Design with visionDesigner™

City's website will be implemented with Responsive Web Design (RWD) ensuring content automatically resizes to fit mobile, tablet and monitor screens. While RWD will make the website viewable across all devices, City may need to adjust content for readability and to improve usability on smaller screens. visionMobile Designer™ enables City to move, hide and reorder content to create an optimized mobile view of the website.

Vision Content Management System™ Interactive Components and Features.

The Consultant will implement City's website using the VCMS. Customization of the VCMS includes the frontend graphic design and layout as well as adding or subtracting fields.

The VCMS will be implemented with the components provided under Part II.

Integration of Third-Party Components and Databases.

- Google Translate Integration
- Online Payment Integration
- Streaming Video Center

Additional HTML Template

The Consultant will provide City an HTML template that vendors of third-party components can use. Consultant will also integrate links to these third-party components into the overall website navigation. Additional web-interfaces with third-party databases and systems are outside the scope of work of this Part I.

Project Notes

City's current content management system will not be identical to the new VCMS. Existing features, customizations, or integrations to the existing site files or database will not be implemented on the new VCMS. City staff is responsible for identifying any City-created customizations made and implementing them in the new VCMS. City staff is responsible for identifying any City-created customizations made and implementing them in the new VCMS.

- The following components will not be duplicated to the new VCMS:
  - Agenda and Minutes Archiver
  - Display left navigation
  - Guestbook
  - iFrame View
  - Link Library
  - News (blog view)
  - Photo Album (flash view)
  - Social Networking RSS Feeds
  - Urchin Traffic Report (replaced by Google Analytics)
- The following component will be duplicated to the new VCMS:
  - Approval Cycle
- RFP Posts will show a status column (Open, Closed, Awarded, Cancelled, or Pending). Closed or expired RFPs will remain on the website past the expiration date.

Consultant will migrate existing content to the new site except for content from the custom components above and from the Form Tool, Polling Tool, Service Requests and Facilities directory. These Tools have been revamped and the City will need to recreate the content currently used on the website.

Website Development Fees

City agrees to pay Consultant for Website Development as follows:

1. Price. Consultant agrees to perform work set forth in this Part I for $27,030.

Service
Website Development Package • One day consultation session via remote meeting service • Navigation and Graphic Design • VCMS • Content migration per Project Notes Section • Integration of third-party tools • One day training session via remote meeting service

2. Payment. Consultant will submit itemized invoices to City for the payments required by this Section, and all invoices will be due and payable within 30 days:

(a) An initial payment equal to 40% of the total cost;
(b) A payment equal to 20% of the total cost upon Consultant's Delivery of the draft homepage design concept to the City;
(c) A payment equal to 20% of the total cost upon implementation of the website into the VCMS on a Consultant-hosted development server; and
(d) A payment equal to 20% of the total cost upon Completion; provided, however that City has completed training. If City has not completed training, then Consultant shall invoice City at the earlier of: (i) completion of training, or (ii) 21 days after Completion.

Additional Website Development Terms and Conditions

1. City understands and agrees that Consultant will develop website frontend to be compatible with Internet Explorer 9, 10, and 11, and the latest released versions at the time of Completion of: Firefox, Chrome, and Safari. Website backend will be compatible with Internet Explorer 9, 10, and 11, and the latest released version of Chrome and Firefox at the time of Completion.

Website may not be compatible with previous or future versions. Website backend will be optimized for 1024 x 768 pixels resolution or above. City understands and agrees that the website will be developed with Hypertext Markup Language ("HTML"), CSS, JavaScript, and Microsoft ASP.NET ("MS-ASP") interfaced with a database created in Microsoft SQL Server ("MS-SQL"). City understands and agrees that the website is developed to run on a Microsoft Windows Server 2012 ("MS-Server"), or later. Responsive Website Design with visionMobile Designer™ mobile browsers will be compatible with the latest released versions at the time of Completion of iOS Safari, Android Chrome, and Windows Phone 7 Internet Explorer, but may not be compatible with previous or future versions. City is responsible for the costs of all software licensing. All of the web browsers listed in this section, and any others added by Consultant at its discretion are herein referred to collectively as the "Supported Web Browsers".

2 Consultant will design the website frontend navigation and graphic design to be generally compliant with WCAG 2.0

A. City further understands and agrees that content, website backend, and third-party tools may not be compliant with Section 508 or WCAG 2.0.

PART II – Subscription Services

Pursuant to the terms herein, Consultant agrees to provide Hosting Services, Support Services, and VCMS Licensing Services (collectively "Subscription Services") as provided below. Consultant will provide Subscription Services to the City in exchange for payment of fees and compliance with the terms and conditions of this Addendum and the Agreement. Subscription Services include the following:

Hosting Services. Consultant will provide shared website hosting on a Microsoft Windows Server and shared database hosting on a Microsoft SQL Server for one (1) unique VCMS website. The shared server hosting service includes:

- SOC-certified datacenter
- Full hardware redundancy
- Redundant generator backup
- Daily data backups
- Intrusion protection
- 24/7 monitoring
- 99.9% uptime
- DDoS mitigation service
- Up to 50 GB of website content storage
- Standard disaster recovery service with 90 minute failover

Support Services. Support Services is defined as technical support, account management, and education and training for the VCMS. Consultant will provide Support Services to a designated City account manager, system administrator or webmaster. Technical support is generally available by email and telephone from 6:00 AM to 6:00 PM Pacific Time Monday through Friday excluding holidays ("Business Hours"), with emergency support available 24 hours a day, 7 days a week. An emergency is defined as City's website being down for more than ten (10) minutes. Support Services also include:

- Dedicated Account Manager
- Account Management*
  - Annual account reviews (Health Checks)
  - Annual site analytics report
  - Annual graphics site audit
  - Up to 15 hours of site improvement credits**
- Education and Training
  - Training and best practices webinars
  - Access to On-Demand Training Library
  - On-going new user training (via remote meeting service)
  - Monthly office hours (via remote meeting service)

* Health Checks, Site Analytics Report and Graphics Site Audit will not be performed until the second year of the Agreement and every year thereafter.

** Fifteen site improvement credits will be available beginning the second year of the Agreement and every year thereafter within the Initial Term. Any unused hours in a given year may be carried over to the following year within the Initial Term. Site improvement credits expire at the end of the Initial Term and will not carry over

beyond the Initial Term.

VCMS Licensing Services. Consultant will provide a license to the Standard edition of the VCMS, which includes the following functionalities indicated by the applicable check marks:

visionLive editions	Standard Edition
visionCMS™ Functionality	
Site Administration & Security	
Advanced WYSIWYG Editor	✓
In page Editing	✓
User Management & Security	✓
Navigation Management	✓
Accessibility Features	✓
visionMobile Designer	✓
Approval Cycle *	✓
Mega Menu Designer *	
Extranet (Password Protected External Content)	✓
User Experience & Interactivity	
Calendar	✓
FAQs	✓
Facility Directory	✓
Staff Directory	✓
Service Directory	✓
Google Translation	✓
Online Form Builder	✓
News Postings	✓
Job Posts	✓
Facilities/Events Registration	✓

* Requires an implementation fee

VISION™

visionLive editions	Standard Edition
Online Polling	✓
Citizen Request Management Tool	✓
Business Directory	✓
RFP Posts	✓
Online Payments	✓
visionSearch	✓
Job Application Manager	
Outreach, Media & Social Networking	
eNotification Tool	✓
Emergency Alerts	✓
RSS Feeds	✓
Facebook & Twitter Feed Readers	✓
Audio & Video Embedding	✓
Photo Gallery & Slide Show	✓
visionSocial	✓
Streaming Video Center	✓
Developer Features	
Import/Export	✓
APIs	✓
Sandbox Test Environment	

Additional Interactive Components and Features

- Approval Cycle

VCMS Licensing Services include:

- Periodic functional enhancements.
- New visionLive™ Interactive Components that may be released from time to time by Consultant.
- Bug fixes to the VCMS code.
- Updates to provide compatibility to future versions of Supported Web Browsers (as listed in Addendum A) within three months of their release. Compatibility with previous versions of Supported Web Browsers is not guaranteed.

VCMS Licensing Services do not include:

- Optional Interactive Components.
- Modules, Programs, or Software Applications.
- Conversion to new platforms.
- Modification of third-party products.
- Compatibility with City's third-party products.
- Website design services.
- All other services not expressly provided for in this Agreement and its applicable Addendum(s).

Customizations. The following are customizations provided in City's project: None.

Unless City has retained other Services from Consultant under the applicable Addendum, City is solely and exclusively responsible for all services not expressly provided for in this Addendum. Any changes, alterations or modification requested by the City to its Website may be subject to a fee to be quoted by a Consultant representative at the time of the request. City may, at any time, upgrade from its current edition to either a Standard or Plus Edition, as applicable. City may not, during the Initial Term (defined below) or any renewal term, downgrade from its current edition to either a Standard or Basic Edition, as applicable. City acknowledges that the Subscription Services may be modified or improved because of the dynamic nature of technology. Consultant may, from time to time, make minor modifications to the Subscription Services, as a whole or any part thereof. Such minor modifications may be implemented at any time and without notice to City. Continued use of the Subscription Services following any modification shall constitute binding acceptance of the modification.

Subscription Fees

Rate: All Subscription Services provided for the City during the first year of the Agreement shall be at no cost to City. Consultant shall invoice City $8,000 per year beginning the second year of this Agreement, which rate shall be increased by five percent (5%) per year, for each year of the Agreement Term, and any and all renewal terms. Consultant shall invoice City annually every year thereafter, including any renewal term. All invoices will be due and payable by City within 30 days. Websites exceeding 50GB of storage shall be subject to an additional monthly fee of $50 per 5GB increment.