



**City Of Costa Mesa**  
**Professional Services Agreement**  
with  
**Golden Star Technology, Inc.**

**To:**

Mike Fuentes  
Finance Department  
City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
(714) 754-5620

**From:**

Golden Star Technology, Inc.  
12881 166th Street  
Cerritos, CA 90703  
(562) 345-8700

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
GOLDEN STAR TECHNOLOGY, INC.**

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THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 1st day of August, 2019 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and GOLDEN STAR TECHNOLOGY, INC., a California corporation ("Consultant").

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide installing, configuring, and data transferring services from old desktop computers to new desktop computers in connection with the City's Desktop Replacement Project, 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.

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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 Consultant's 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, and in accordance with Consultant's Services Warranty set forth in Exhibit A. 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. Equipment Warranty. Consultant shall provide the Workmanship Warranty set forth in Exhibit A.

1.4. 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.

1.5. 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.

1.6. 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.

1.7. 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.

1.8. 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.

1.9. 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 fee schedule set forth in Exhibit A. Consultant's total compensation shall not exceed Twenty Thousand Two Hundred Forty Dollars (\$20,240.00).

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 Manager or designee, 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 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 to 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. 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 one (1) year, ending on July 31, 2020, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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.
- (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:**

Golden Star Technology  
12881 166th St.  
Cerritos, CA 90703  
Tel: (626) 800-8381  
Attn: Michael Stone

**IF TO CITY:**

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5620  
Attn: Adam Silva

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. 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. 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.

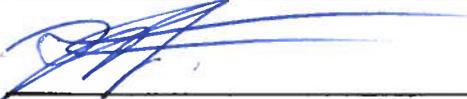
6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

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 appear on following page.]

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: 8/20/2019

Michael Stone - Senior Business Exec  
[Name and Title]

\_\_\_\_\_  
Social Security or Taxpayer ID Number

**CITY OF COSTA MESA**

  
\_\_\_\_\_  
Lori Ann Farrell Harrison  
City Manager

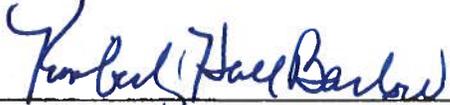
Date: 8/22/19

**ATTEST:**

Brenda Green 9/5/19  
Brenda Green  
City Clerk



**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kimberly Hall Barlow  
City Attorney

Date: 8/28/19

**APPROVED AS TO INSURANCE:**

  
\_\_\_\_\_  
Ruth Wang  
Risk Management

Date: 8/23/19

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Adam Silva  
Project Manager

Date: 8/27/19

DEPARTMENTAL APPROVAL:

  
\_\_\_\_\_  
Steven Ely  
IT Director

Date: 08/27/19

APPROVED AS TO PURCHASING:

  
\_\_\_\_\_  
Kelly Telford  
Finance Director

Date: 8/27/19

**EXHIBIT A**  
**CONSULTANT'S PROPOSAL**

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## Solution Proposal

OP45947 Costa Mesa Lorenzana PC DEPLOYMENT  
SERVICES

06/04/2019

Quote # 051632

Version 3

Prepared for:

City of Costa Mesa

Adam Silva  
adam.silva@costamesaca.gov

## OP45947 Costa Mesa Lorenzana PC DEPLOYMENT SERVICES



**Prepared by:**

**Golden Star Technology**  
Michael Stone  
(562) 345-8700  
Fax (562) 546-1290  
mstone@gstes.com

**Prepared for:**

**City of Costa Mesa**  
77 FAIR DRIVE 1ST FLOOR ATTN: Finance  
Dept./ Purchasing  
COSTA MESA, CA 92626  
Adam Silva  
adam.silva@costamesaca.gov

**Quote Information:**

**Quote #: 051632**  
Version: 3  
Quote Date: 06/04/2019  
Expiration Date: 06/30/2019

### ▶ Statement of Work

#### SUMMARY.

**With this Firm Fixed Price project proposed; GST is to migrate users' data of 150 workstations from Windows 8 (HP) to Windows 10 (Dell) and 75 Monitors at Costa Mesa City Hall**

Followings are the scope and task breakdown of a typical migration project. Please review and modify as needed.

#### **Define Business Case Document**

- Document should include the followings;
  - Scope of the project; quantity, locations, time lines, contents to be included
  - Project Acceptance Criteria
  - Requirement and deliverable
  - Assumption and discrepancy handling process
- MILESTONE: Business Case Document Approval

#### **Discovery**

- Infrastructure Discovery & Assessment
  - Technical Architecture / Discovery
    - Identify Current State Desktop Management Infrastructure
    - Identify User To Department Mapping Source
    - Identify User To Location Mapping Source
  - Milestone: Build Initial Discovery Feed Diagram
- Data Gathering
  - Infrastructure
    - Gather current network topology / capacity data
    - Gather current desktop management infrastructure topology / capacity data
  - Software & Hardware Inventory
  - User Data Collecting
    - User Data (users, groups)
    - User Profile Information (Location, Network Drive, and Printer Settings)
    - Departmental Data (if any)
  - Milestone: Data Gathering Complete
- MILESTONE: Discovery Stage Complete

#### **Assessment**

- **Hardware Compatibility Assessment**
  - Milestone: Hardware Compatibility Assessment Complete
- **Software Compatibility Assessment**
- **Categorize Applications**
  - Identify Legacy Applications To Be Retired (Review Usage)
  - Identify Core (Build Image) Applications
  - Build needed Image editions
  - Milestone: Software Compatibility Assessment Complete

### **Technology, Process & Tools Design**

- **Process Design**
  - Define Deployment Schedule and Resources Needs
  - Define Deployment Process
    - Readiness Review Process
    - Pre-Migration Process
    - Migration Process
    - Post-Migration Process
    - Standard Report Requirements
- **MILESTONE: Technology, Process & Tools Design Complete**

### **First Article Validation**

- **Deployment Pilot execution**
  - Pilot Readiness & Initiation
    - Pilot Process Check List
      - Project Management Process Step Tests (coordination between GST PM and City PM)
      - Network and Facilities Environment Setup Step Tests
      - Deployment Logistics Process Step Tests (End user contacted and device ready to be removed and stored after the deployment)
      - End User Training & Communications Process Step Tests
      - Post Deployment Support Process Step Tests
    - Identify Pilot Scope
      - Identify Potential Additional Needs
    - Pilot Readiness & Initialization Complete
- **MILESTONE: First Article Validation Complete**

### **Deploy**

- **Deployment Tasks**
  - Mobilize Deployment Team
  - Perform Migration Tasks
  - Update Recovery Environment
  - Track And Log Any Migration Failures & Reasons
  - Confirm Migration Success

### **Project Sign with Deliverable**

### **EXCLUSIONS**

- GST is not responsible for the coordinating end users for onsite implementation. (City PM is to coordinate the end users to be worked on two days before the onsite implementation)
- GST is not responsible for the temporary network or storage for the migration deployment. (If there are needs for

the temporary network storage, City IT is to provide the needed resources.)

## ASSUMPTIONS

### GENERAL PROVISIONS

- GST reserves the right to charge, time and materials basis for any additional work over and above this service package pricing that may result from work required address service prerequisites or other requirements not met by the Customer.
- Should the customer not, within 30 days of having purchased the service, contact GST schedule its subsequent delivery, GST reserves the right re-evaluate the charges for this service.
- The ability of GST deliver this service is dependent upon the Customer's full and timely cooperation with GST, as well as the accuracy and completeness of any information and data the Customer may provide GST.
- The following items are excluded unless specified in the Scope of Services
  - Electrical infrastructure (outlets, conduits, breaker boxes, panels, etc.)
  - Concrete saw cutting and/or core drilling
  - Fire wall, ceiling, roof and floor penetration
  - Drywall replacement and/or repair
  - Ceiling tile or T-bar modification, replacement and/or repair
  - Millwork (moldings, trim, etc.)
  - Painting and patching
  - Permits (unless specifically provided for elsewhere in the contract)
  - HVAC and plumbing relocation
  - Cutting of Granite or Glass table tops
  - Repositioning of existing lighting
  - Moving or displacing existing equipment
  - Disposal if existing equipment

### CUSTOMER REQUIREMENTS

#### PROJECT SPECIFIC REQUIREMENTS

- City is to provide the needed information; i.e. device ID, locations, quantities, general device profile and its requirement, etc..
- City is to provide the report template if it is different than the one provided by GST.

### GENERAL RESPONSIBILITIES

- Coordinate the preparation of any hardware and/or software that is not included for this project. Ensure that existing hardware is fully functional and software/firmware is updated.
- Assure that the environment is 100% ready. If the environment is not 100% ready the scheduling of the implementation will not be finalized until it is.
- Customer is responsible for providing 24 hours or greater advanced notice for the rescheduling or cancellation of GST's onsite engineering services. If less than 24 hours is given the customer will be charged a half day of GST's engineers time at \$175/hr.
- Coordinate service deployment on third-party maintained hardware/software (if applicable).
- Assign a designated person from the Customer's staff who, on behalf of the Customer will grant all approvals, provide information, and otherwise be available to assist GST to facilitate the delivery of this service.
- Ensure that all hardware, firmware, and software that the GST engineer will need in order to deliver this service are

available.

- Allow GST full and unrestricted access to all locations where the service is to be delivered.
- Provide a suitable work area for delivery of the service, including access to an outside telephone line, power, any network connections, etc. that is required.
- Be responsible for all data backup and restore operations
- Provide one point-of-contact that will finalize decisions during the project.
- Provide necessary documentations, paperwork, schematics, line drawings, and information for GST to complete the project. Any delays in providing the necessary project documentation will delay the project.

## SERVICES TERMS AND CONDITIONS

### NON-COMPETE CLAUSE

GST assigns service professionals with qualifications commensurate with tasks listed in this scope of work. If the customer, directly or indirectly, contracts with or hires any GST employee engaged in providing services to the customer under this agreement or any other agreement, written or oral, GST will have the option of negotiating a change in the cost and/or time to deliver or charge the customer the equivalent of 30% of the employees' annual salary as a finder's fee. This clause is applicable for a period of up to ninety days from the last date of services rendered by a GST employee to the customer.

### TIME RECORDS

Each employee, either directly employed by GST or a subcontractor (hereinafter called "GST employee") will present a time record to the customer setting forth the hours worked. An authorized representative of the customer must countersign the record and will thereby certify that such time is correct and that the work was performed in a satisfactory manner.

### NORMAL BUSINESS HOURS

GST service hours are 8:00 am to 5:00 pm Monday through Friday. Overtime (over 8 hours in one day), scheduled after hours and weekends are charged at time and one-half of contracted service rate. Emergency after hours, weekends and holidays are charged at two times contracted service rate. Customer is responsible for providing 24 hours or greater advanced notice for the re-scheduling or cancellation of GST onsite engineering services. If less than 24 hours is given the customer will be charged a half day of GST engineering time at \$175/hr.

### TERMINATION TERMS

Client may terminate work under this Statement of Work, in whole or in part, at any time by 30 day written notice. Such notice shall state the extent and effective date of such termination. Upon receipt thereof, GST shall, to the extent directed by the Client or its designees, stop work under this agreement. If the agreement is so terminated for convenience, GST shall be paid in accordance with the terms of the order for only those materials or supplies delivered and accepted.

### COMMENCEMENT OF WORK

Work shall not commence under the Contract until a fully executed agreement has been received by GST and GST has been given approval to proceed by customer.

### DATA LOSS

GST make no guarantee against data loss during services engagements. It is the customers responsibility to ensure data is properly protected (backed up) before the engagement begins.

### PRODUCT RETURNS

Standard stock items purchased from GST may be returned for any reason within (14) fourteen days. Custom orders are non-returnable and non-refundable. All original packaging, accessories and documentation must accompany the item and be in unmarked condition. Items must be shipped via at least 2nd day freight with insurance for the full value of the item. Returned items are subject to a 25% restocking fee. Though rare, a customer may need to return a defective product. Defective product returns are not subject to the 25% restocking fee and will be exchanged in accordance with the manufacturer's policy within 30 days of purchase.

### **PROJECT DELAYS**

Delays due to client configuration specifications, hardware delivery, carrier availability, and facility access, physical or environmental delays are subject to change orders as billable delays. These delays can also impact project timeline and deadlines.

### **PREVAILING WAGE CLAUSE**

GST holds the right to charge the customer additional services fees if the project is deemed to have prevailing rates of wages requirements prior, during, or after project completion. GST adheres and complies with the provisions of the California Labor Code. All workers employed on public works projects must be paid the prevailing wage determined by the Director of the Department of Industrial Relations, according to the type of work and location of the project. The prevailing wage rate is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate). If there is no single rate paid to a majority, then the single or modal rate being paid to the greater number of workers is prevailing.

### **GST SERVICES WARRANTY**

#### **QUALITY OF SERVICES**

GST warrants that its Services will be of professional quality (performed in a good and workmanlike manner) and will conform to generally accepted industry standards for such Services and to the requirements specified in this SOW. GST's personnel shall be competent and qualified to perform the tasks to which they are assigned. In the event of any breach of this warranty, GST, at its sole expense and without delay, shall re-perform the non-conforming Services to the applicable standard.

#### **WORKMANSHIP WARRANTY**

GST certifies that all equipment and materials furnished shall carry a ninety (90) day warranty on parts. GST guarantees to furnish any qualified personnel (during normal business hours, Monday to Friday, 8:00 am to 5:00 pm) to the installation site for the period of one (1) year from the date of installation to repair or replace defective items installed or provided by GST exclusively. If the item is determined to not be defective, GST will charge the customer for all time spent on the incident at a rate of \$175/hour. Determination if item is defective or was changed, damaged, reconfigured, or altered by non GST personnel is under sole authority of GST. Any change, alteration, damage, or reconfiguration by non GST personnel voids one (1) year warranty. No response timeframe SLA guaranteed for warranty work. Further, all equipment purchased from GST in our installed system is subject to a manufactures warranty. Further, all equipment purchased from GST in our installed system is subject to a manufacture warranty. GST will not honor any other warranty, implied or otherwise. In no event shall GST be liable, or in any way responsible for damages, or defect in the system, which were caused by neglect, vandalism, misuse, environmental damage or by repairs or attempted repairs performed by anyone other than a GST service technician. Nor shall GST be liable or in any way responsible for any incidental or consequential economic or property damage.

### **CHANGE MANAGEMENT**

GST establishes change management procedures to document changes that are made to the baseline project identified in the Statement of Work. These procedures are in place to reduce the potential for cost and schedule variances.

**Customer is responsible for providing 24 hours or greater advanced notice for the re-scheduling or cancellation of GST engineering services. If less than 24 hours is given the customer will be charged a half day of GST**

12881 166th Street  
Cerritos, CA 90703  
www.gstes.com  
(562) 345-8700



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**engineering time at \$175/hr.**

If a change needs to be made to the project, which is not included in the SOW or differs from the SOW, GST or the client must complete the Change Management Request form. GST will review the completed form and provide an estimate to complete the request. Client must approve the additional hours/costs in order to complete the request.

In the event a change requested by the customer reduces the amount of work and the project is a firm fixed priced project, the full amount of the project will be invoiced.

A change occurs when GST encounters any of the following situations during project delivery:

1. Either party identifies new requirements not included in the original project's scope
2. Either party makes suggestions that would improve the proposed system but are not necessarily required to address the project requirements; such suggestions are incorporated into a subsequent project phase
3. Either party changes the direction and intent of this project, which requires GST to rework the solution design or services

Changes in the scope of work defined in this Statement of Work are only effective if both the customer and GST agree to them in a written document setting forth the modifications and any changes to the delivery schedule and payment terms.

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Cerritos, CA 90703  
www.gstes.com  
(562) 345-8700



## LACCD IT Time and Material Services

Line	Item	Description	Price	Qty	Ext. Price	Taxable
1	GST-SVC-LACCD-PM	Project Management	\$65.00	33	\$2,145.00	<input type="checkbox"/>
2	GST-SVC-40402-LABOR14	Installer - Prevalling Wage	\$55.00	329	\$18,095.00	<input type="checkbox"/>
					Subtotal:	\$20,240.00

## Quote Summary

Description	Amount
LACCD IT Time and Material Services	\$20,240.00
Total: \$20,240.00	

### TERMS AND CONDITIONS

All prices and descriptions are subject to change without notice.

THIS PRICE LIST IS A QUOTATION ONLY AND IS NOT AN ORDER OR OFFER TO SELL. No contract for sale will exist unless and until a purchase order has been issued by you and accepted by Golden Star Technology Inc. ("GST"). Acceptance by GST of any offer is expressly conditioned upon your assent to the Terms and Conditions of Sale set forth in GST's invoices.

The prices contained in this list may not be relied upon as the price at which GST will accept an offer to purchase products unless expressly agreed to by GST in writing. Products quoted were selected by GST based on specifications available at the time of the quotation, and are not guaranteed to meet bid specifications. Product specifications may be changed by the manufacturer without notice. It is your responsibility to verify product conformance to specifications of any subsequent contract. All products are subject to availability from the manufacturer. The freight costs listed are estimates. Shipping costs may vary based on time of purchase, quantity ordered, shipment carrier and warehouse sourced. Actual shipping costs will be calculated during shipment and will be reflected on your invoice. For hardware product(s), manufacturer warranty will begin upon physical delivery of the hardware products(by) by the customer or GST warehouse. For software product(s), the manufacturer warranty will begin upon electronic or physical receipt of the software product(s) by you or GST.

GST is not responsible for compliance with regulations, requirements or obligations associated with any contract resulting from this quotation unless said regulations, requirements or obligations have been passed to GST and approved in writing by an authorized representative of GST.

**EXHIBIT B**  
**CERTIFICATES OF INSURANCE**

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**NOTEPAD**INSURED'S NAME **GOLDEN STAR TECHNOLOGY INC.****GOLDE-1  
OP ID: WS****PAGE 2  
Date 08/20/2019**

The certificate holder, The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are an additional insured/scheduled person and organization as required by written contract or agreement per General Liability per form 80-02-2367 (Rev. 5-07). Waiver of Subrogation applies to Worker Compensation.

Endorsement

Policy Period                    JANUARY 11, 2019 TO JANUARY 11, 2020

Effective Date                 JANUARY 11, 2019

Policy Number                 3583-58-31 WUC

Insured                         GOLDEN STAR TECHNOLOGY, INC. DBA: GST

Name of Company             FEDERAL INSURANCE COMPANY

Date Issued                     JANUARY 11, 2019

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added.

**Who Is An Insured**

**Additional Insured -  
Scheduled Person  
Or Organization**

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).
- with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.

**Liability Endorsement**  
*(continued)*

Under Conditions, the following provision is added to the condition titled Other Insurance.

**Conditions**

**Other Insurance –  
Primary, Noncontributory  
Insurance – Scheduled  
Person Or Organization**

If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

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**Schedule**

CITY OF COSTA MESA  
77 FAIR DRIVE  
COSTA MESA, CA 92626

All other terms and conditions remain unchanged.

Authorized Representative





THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## POLICY CHANGES

Golden Star Technology, Inc  
12881 166th St  
Cerritos, CA 90703

Policy Change  
Number 1

POLICY NUMBER  GOAU054160	POLICY CHANGES EFFECTIVE  06/01/2019	COMPANY  AmGUARD Insurance Company
NAMED INSURED  Golden Star Technology, Inc		AUTHORIZED REPRESENTATIVE
COVERAGE PARTS AFFECTED  Commercial Auto		
CHANGES		
<p><b>Type:</b> Global Other Coverages <b>Method:</b> Added <b>Details:</b> Blanket Waiver of Subrogation</p> <p><b>Type:</b> Global Other Coverages <b>Method:</b> Added <b>Details:</b> Additional Insured When Required by Contract Endorsement</p> <p><b>Type:</b> Vehicle Changes <b>Method:</b> Vehicle Added <b>Details:</b> Vehicle 26 - 2018 TOYOTA RAV4, VIN 2T3WFREXJW455517</p> <p><b>Type:</b> Policy Forms <b>Method:</b> Added <b>Details:</b> Blanket Waiver of Subrogation (BA 99 02 09 08)</p> <p><b>Type:</b> Policy Forms <b>Method:</b> Added <b>Details:</b> Additional Insured When Required by Contract (BA 99 04 06 18)</p> <p style="text-align: right;">Premium Adjustment : 3,439.00</p>		

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## BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer Of Rights Of Recovery Against Others To Us** is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED WHEN REQUIRED BY CONTRACT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This provision does not apply in regard to any ownership, maintenance or use of the additional insured's "autos."

#### **Additional Insured When Required by Contract**

- (1) Paragraph A.1. – **WHO IS AN INSURED – of Section II – Liability Coverage** is amended to add:

- d. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

#### **(2) How Limits Apply**

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or

- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

#### **(3) Additional Insureds Other Insurance**

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that the insurance is primary and non-contributory with the additional insured's own insurance.

#### **(4) Duties in The Event Of Accident, Claim, Suit or Loss**

If another person or organization is added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in **A. Loss Conditions 2. – Duties In The Event Of Accident, Claim, Suit Or Loss – of SECTION IV – BUSINESS AUTO CONDITIONS**, in the same manner as the Named Insured.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CALIFORNIA AUTO MEDICAL PAYMENTS COVERAGE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### **A. Coverage**

We will pay reasonable expenses incurred for necessary medical and funeral services to or for an "insured" who sustains "bodily injury" caused by "accident". We will pay only those expenses incurred, for services rendered within three years from the date of the "accident".

### **B. Who Is An Insured**

1. You while "occupying" or, while a pedestrian, when struck by any "auto".
2. If you are an individual, any "family member" while "occupying" or, while a pedestrian, when struck by any "auto".
3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.

### **C. Exclusions**

This insurance does not apply to any of the following:

1. "Bodily injury" sustained by an "insured" while "occupying" a vehicle located for use as a premises.
2. "Bodily injury" sustained by you or any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by you or furnished or available for your regular use.

3. "Bodily injury" sustained by any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by or furnished or available for the regular use of any "family member".
4. "Bodily injury" to your "employee" arising out of and in the course of employment by you. However, we will cover "bodily injury" to your domestic "employees" if not entitled to workers' compensation benefits. For the purposes of this endorsement, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.
5. "Bodily injury" to an "insured" while working in a business of selling, servicing, repairing or parking "autos" unless that business is yours.
6. "Bodily injury" arising directly or indirectly out of:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7. "Bodily injury" to anyone using a vehicle without a reasonable belief that the person is entitled to do so.
8. "Bodily injury" sustained by an "insured" while "occupying" any covered "auto" while used in any professional racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply to any "bodily injury" sustained by an "insured" while the "auto" is being prepared for such a contest or activity.

#### **D. Limit Of Insurance**

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for "bodily injury" for each "insured" injured in any one "accident" is the Limit Of Insurance for Auto Medical Payments Coverage shown in the Declarations.

No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage and any Liability Coverage form, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

#### **E. Changes In Conditions**

The **Conditions** are changed for Auto Medical Payments Coverage as follows:

1. The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply.
2. The reference in **Other Insurance** in the Auto Dealers and Business Auto Coverage Forms and **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form to "other collectible insurance" applies only to other collectible auto medical payments insurance.

#### **F. Additional Definitions**

As used in this endorsement:

1. "Family member" means a person related to you by blood, adoption, marriage or registered domestic partnership under California law, who is a resident of your household, including a ward or foster child.
2. "Occupying" means in, upon, getting in, on, out or off.

**EXHIBIT C**

**CITY COUNCIL POLICY 100-5**

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# CITY OF COSTA MESA, CALIFORNIA

## COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

### BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

### PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

### POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
  - B. Establishing a Drug-Free Awareness Program to inform employees about:

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

1. The dangers of drug abuse in the workplace;
  2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation and employee assistance programs; and
  4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
  2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
  2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.

2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
  - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
  - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
  - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
  
3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.