

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH AA ARCHITECTURE INTERIOR PLANNING & DESIGN**

THIS AGREEMENT is made and entered into this **16TH day of April, 2015** ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and Afshan Afshar, Inc., a California corporation doing business as AA Architecture Interior Planning & Design ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide access compliance 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" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

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

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

1.0. SERVICES PROVIDED BY CONSULTANT

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

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

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

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

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

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

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

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

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

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

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the amount set forth in the Proposal. Consultant's total compensation shall not exceed Two Thousand Dollars (\$2,000.00).

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 or the Project Manager for this Project, prior to Consultant performing the additional services,

approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

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

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

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the schedule set forth in the Proposal.

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 until June 30, 2015, 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 CEO or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and

agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

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

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

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

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

IF TO CONSULTANT:

AA Architecture Interior Planning &
Design
26732 Pepita Drive
Mission Viejo, CA 92691
Tel: (949) 463-8924
Attn: Afshan Afshar

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Tel: (714) 754-5604
Fax: (714) 754-4856
Attn: Khanh Nguyen

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

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

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

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign,

transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

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

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

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

subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF COSTA MESA,
A municipal corporation

REDACTED

Chief Executive Officer

Date: 4/7/15

CONSULTANT

REDACTED

Signature

AFSHAN AFSHAR
Name and Title PRESIDENT

REDACTED

Social Security or Taxpayer ID Number

Date: 2015.03.16

ATTEST:

REDACTED

City Clerk and ex-officio Clerk
of the City of Costa Mesa



APPROVED AS TO FORM:
REDACTED

[Redacted Signature]

City Attorney

Date: 03/27/15

APPROVED AS TO INSURANCE:
REDACTED

[Redacted Signature]

Risk Management

Date: 3/24/15

APPROVED AS TO CONTENT:
REDACTED

[Redacted Signature]

Khanh Nguyen, Project Manager

Date: 3/20/15

DEPARTMENTAL APPROVAL
REDACTED

[Redacted Signature]

Gary Armstrong,
Director of Development Services

Date: 3/20/15

EXHIBIT A
CONSULTANT'S PROPOSAL

February 20, 2015

Mr. Charles Chamoun
Acting Chief Plan Examiner
City of Costa Mesa
77 Fair Drive,
Costa Mesa, California 92628

Subject: **ACCESS COMPLIANCE SERVICES AGREEMENT**
For Community Center at City Hall
Project Number: 1509
Revision 1

Dear Charles:

AA Architecture Interior Planning & Design, herein-after referred to as "Architect", is pleased to submit this proposal to the City of Costa Mesa, herein-after referred to as "Client", to provide Access Compliance Services for the Path of Travel associated with the Community Center at City Hall, in Costa Mesa, California, to review and document existing conditions, and corrective measures that may be required for compliance with the accessibility requirements of California Building Code, and Title II of federal ADA Standards. Requirements of the Americans with Disabilities Act of 1990 regarding employment (Title I), transportation (Title II, Parts I and II) and telecommunications (Title IV) are specifically excluded from this proposal. Services would be as follows:

A. GENERAL

1. **The Project**
 - a) Review public and common areas including parking areas, ground level sidewalks, ground floor lobbies, circulation paths, entrances, exits, ground floor toilet rooms, drinking fountains, signage and similar areas, to gather information regarding their compliance with the California Building Code, CBC 2013, and ADA Standards 2010.
 - b) Review architectural construction drawings for the Community Center alteration, prepared by others for compliance with the disable access provisions of CBC 2013, and ADA 2010, and prepare review comments.The review will be conducted by a CASp certified professional.

The following facility will be reviewed:

Path of Travel elements associated with the Community Center located on the ground floor of the City Hall at 77 Fair Drive, Costa Mesa, California 92628-1200.

Interior spaces of the Community Center Suite; Braille type and translation message, are specifically excluded from the scope of this proposal.

Mr. Charles Chamoun
Acting Chief Plan Examiner
ACCESS COMPLIANCE SERVICES AGREEMENT
For Community Center at City Hall
February 20, 2015
Revision 1

B. INITIAL BASIC SERVICES

PHASE I – FIELD REVIEW

Architect shall visit the areas noted above to generally observe and gather information regarding their compliance to determine types and extent of possible violations.

Areas covered in the study are as follows:

- Parking areas
- Access from parking to Community Center Suite entrances
- Access from public street and sidewalk to primary Community Center Suite entrances
- One set of multi-user Men's and Women's restrooms on Ground floor
- Drinking fountains on Ground floor
- Exterior stairs

This review is assumed to be thorough and complete, based on current ADA and CBC requirements, but is in no way guaranteed to be an exhaustive compilation of access deficiencies that may exist or may yet be discovered. Free access to the facility is to be provided on the days of the visit. Additional trips caused by site security or other restrictive issues will be charged as additional service.

PHASE II – ANALYSIS AND REPORT

Upon completion of field review Architect shall examine and analyze the data gathered in Phase I. If the site was found to meet all applicable accessibility standards, Architect shall provide a written, signed and dated CASp inspection report, indicating in the opinion of the CASp the inspected areas of the project site meet construction-related accessibility standards.

If the Architect determines that corrections are needed to the project site in order for the facility to meet all applicable construction-related accessibility standards, the report will provide the following:

- (A) An identification and description of the inspected structures and areas of the site.
- (B) A statement that, in the opinion of the CASp, the inspected structures and areas of the site need correction to meet construction-related accessibility standards.
- (C) An identification and description of the structures or areas of the site that need correction and the correction needed. Only the instances of non-compliance will be included in the report. References to specific provisions of the Americans with Disabilities Act Standards, and California Building Code will be used to ease

Mr. Charles Chamoun
Acting Chief Plan Examiner
ACCESS COMPLIANCE SERVICES AGREEMENT
For Community Center at City Hall
February 20, 2015
Revision 1

references to the regulation's provisions. Possible conceptual barrier removal design solution ideas will be noted for your consideration, and your budget pricing. Report will be transmitted electronically.

The report's format will incorporate blank columns to accept data to be developed by you and your legal, financial, and operational advisors in subsequent phases of the process not within the scope of this proposal. Those columns will address cost data, and schedule of completion or each of the corrections. Report will be transmitted electronically.

Upon a determination that the reviewed areas of the facility meet applicable construction-related accessibility standards, or if those areas need correction, a numbered disability access inspection certificate for the areas of the facility inspected will be issued, indicating that they have been inspected by a certified access specialist.

PHASE III – DRAWING REVIEW

Construction drawings for the alteration of the Community Center will be reviewed one time for compliance with the CBC 2013, and ADA Standards 2010, and review comments will be issued to the Client.

C. SUPPLEMENTAL OR ADDITIONAL SERVICES

Supplemental or Additional Services are not included in the Basic Services unless specifically identified in this proposal, and may be provided only if authorized and confirmed in writing by Client and the Architect. Such additional or Supplemental Services may include but not limited to the following:

- Services connected with areas of work outside of project areas and scope of the basic services.
- Updates to the report with additional Client provided data
- Preparation of Path Of Travel drawings
- Construction Phase services
- Meetings in person and /or conference calls Services
- Additional review of design and construction drawings prepared by others
- Review of corrections made upon completion of construction.

D. COMPENSATION AND OTHER CONDITIONS

1. **Basic Fees:** Fees for the Basic Services Phase I, and II of the project described in this proposal are to be compensated on a lump sum basis of two thousand (\$2,000) dollars. Fees are distributed among phases as follows:

Phase I_ Field Review	\$700
Phase II_ Analysis and Report	\$800
Phase III_ Drawing Review	\$500

Mr. Charles Chamoun
Acting Chief Plan Examiner
ACCESS COMPLIANCE SERVICES AGREEMENT
For Community Center at City Hall
February 20, 2015
Revision 1

This fee proposal is valid if accepted by March 16, 2015

2. **Payments:** Payments are due upon completion of work for each phase per attached Standard Terms and Conditions.
3. **REIMBURSABLE EXPENSES:** In addition to the above fees, Reimbursable Expenses incurred in connection with the Project are to be compensated by the Client to the Architect on the basis of amounts invoiced to the Architect. These expenses may include but not limited to the following:
 - The expense for reproduction of drawings, plans and documents
 - Delivery and postage
 - Travel millage expenses at IRS rates current at time of travel
 - State of CA charges for Certificates of Inspection, \$10 each
4. **Basic Hourly Rate Schedule:** valid until December 31, 2015.

Senior Architect/Project Manager	\$100
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5. **Consultants:** Engineering and other consultants' services and documents are not included in the Architects Basic Services.

E. SCHEDULE

Services to commence upon acceptance of this proposal and to proceed continuously until completion presently projected to be no later than May 18, 2015.

F. UNDERSTANDINGS

1. As with any other federal, state, county or city law, ordinance, rule or regulation, ADA Standards and the CBC contain ambiguous and contradictory requirements that will be subject to various and often contradictory interpretations. The Architect shall be entitled to rely reasonably on written interpretations and specific approvals regarding requirements given by government officials with responsibility for enforcing ADA and/or CBC requirements. Although the Architect will use professional efforts to interpret applicable requirements and to advise the Client as to what modifications to the facilities may be required by the regulations, these interpretations are a matter of professional judgment. The Architect, therefore, cannot and does not warrant or guarantee that the facilities reviewed will fully comply with interpretations of the requirements by regulatory bodies or court decisions.
2. A site plan drawing and parking count for the area of the site under review to be provided by Client prior to start of the work.

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3. **Limitation of Liability:** In recognition of the relative risks and benefits of the Project to both Client and Architect relating to Architect's provision of services in accordance with this Agreement, the risks have been allocated such that Client hereby agrees, that to the fullest extent permitted by law, the Architect's total liability to the Client, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes, including but not limited to the Architect's negligence, errors, omissions, and / or breach of contract shall not exceed the total compensation received by the Architect under this Agreement.
4. **Limited Scope:** This Agreement is limited to access compliance issues for the architectural elements of the public and common areas only. Other existing conditions, including but not limited to, hazardous materials abatement, soil conditions, structural system, mechanical system, electrical system, fire protection system, or other similar building systems, or non-building issues such as Planning and Zoning requirements, employment, transportation, telecommunication issues are not included within the scope of this Agreement.
5. Client agrees that Architect, and its officers, employees, representatives or agents (hereby collectively the Architect) shall not be liable in any way for errors made by Client, their agents or employees. This includes, but is not limited to, any errors made by wrong interpretations of the Architect's reports, comments, and recommendations, or Client's deviation, or changes to the final report's comments, and recommendations. Furthermore Client, at their own expense, will defend, indemnify, and hold the Architect harmless from any claim made or threatened against the Architect, any suite or proceeding brought against the Architect, as well as any incidental, consequential or associated damages, costs, losses, delays, or any other charges which may be the result of such errors made by the Client, their agent or employees.
6. **Meetings:** The Architect will attend, and participate in, as many meetings as specified under Basic Services. Meetings in excess of those specified will be invoiced as additional service. Meetings shall not be prorated and the Architect's fees shall not be reduced should fewer than the specified number of meetings be necessary for the Architect to complete the professional services of this agreement.

G. AGREEMENT

This proposal shall become the Letter of Agreement upon acceptance by the City of Costa Mesa. This Agreement is comprised of, in order of precedence: 1) this Letter of Agreement, and 2) the attached Standard Terms and Conditions of the Agreement, dated January 2015, and 3) Exhibit A showing the site, attached.

Where a portion of one document is amended by another of higher precedence, all applicable unmodified portions shall remain in effect.

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California law governs this Agreement which represents the entire integrated agreement between the Architect and the Client. This Agreement supersedes all prior negotiations, representations and agreements. This Agreement may be amended only in writing signed by both the Architect and the Client.

ACCEPTANCE

This Agreement is entered into by the following signatories who are legally empowered and authorized to execute this Agreement.

AGREED:

ARCHITECT:
AFSHAN AFSHAR INC.
DBA: AA ARCHITECTURE, INTERIOR PLANNING & DESIGN

Signature: _____

Name: Afshan Afshar
Title: President
Date Signed: _____

CLIENT:
CITY OF COSTA MESA

Signature: _____

Name: Mr. Charles Chamoun
Title: Acting Chief Plan Examiner
Date Signed: _____

1. **Services Described:** The Architect's services are limited to those services describe in the Letter of Agreement.
2. **No Third Party Beneficiaries:** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Client or Architect. Furthermore, in light of the recent Beacon Residential Community Association decision (and so long as this maintains the current state of the law), to the extent that any homeowner or homeowners association (HOA) is considered a third party beneficiary, then the Client shall include in its HOA CC&Rs/bylaws that the homeowners' and HOA's third party rights are subject to any defense which the Architect could assert against the Client under this Agreement.
3. **Access:** The Architect shall have access to the work at all times for site visits.
4. **Communication:** The Architect shall be kept up to date in writing of any communications and decisions relevant to the project and the Architect's services.
5. **Project Information:** Complete project information shall be provided to the Architect. The Client shall provide or cause others to provide full information regarding the requirements and constraints of the project to the Architect. Architect shall be entitled to rely upon this information.
6. **Project Phases:** Architect's services will be provided in sequential phases as described in the Letter of Agreement. Out-of-sequence services if requested shall be subject to additional compensation.
7. **Area Calculations:** If any, provided by the Architect are approximate and not intended for use as the basis for calculating rent or other such matters.
8. **Limitations of Responsibility:**
 - a. Architect shall not be responsible for the acts or omissions of Client, Client's other consultants, contractors, subcontractors, their agents or employees, or other persons performing work or services on the Project. Architect shall neither have control over nor be in charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, fabrication, installation, procurement, shipment, delivery, receipt, inspection, or for safety precautions and programs in connection with work by any other person on the Project site. Architect shall not be responsible for Client's or others' implementation of or compliance with safety programs, or for initiating, maintaining, monitoring or supervising the implementation of such programs or the procedures and precautions associated therewith, or for the coordination of any of the above, nor shall Architect be responsible for the adequacy or completeness of any of the above safety programs, procedures or precautions
 - b. Client understands that Architect shall not be liable in any way for errors made by Client, their agents or employees. This includes, but is not limited to, any errors made by wrong interpretations of the Architect's drawings, reports, comments, and recommendations, or Client's decision to deviate from them. Furthermore Client, at their own expense, will defend, indemnify, and hold the Architect harmless from any claim made or threatened against the Architect, any suit or proceeding brought against the Architect, as well as any incidental, consequential or associated damages, costs, losses, delays, or any other charges which may be the result of such errors made by the Client, their agent or employees.
9. **Indemnification:**
 - a. Architect agrees to indemnify and hold Client harmless from and against all claims, liabilities, suits, demands, losses, costs and expenses (including reasonable attorneys' fees and costs of defense) ("Claims"), to the extent such Claims are determined by a court of competent jurisdiction or arbitrator to have been caused by the negligence or willful misconduct of Architect. This obligation shall not apply to the extent said Claims arise out of, pertain to, or relate to the negligence of Client or Client's other agents, other servants, or other independent contractors, including the contractor, subcontractors of contractor or other consultants, or others who are directly responsible to Client, or for defects in design or construction furnished by those persons.
 - b. Client agrees to indemnify and hold Architect harmless from and against all claims, liabilities, suits, demands, losses, costs and expenses (including reasonable attorneys' fees and costs of defense), to the extent they are determined by a court of competent jurisdiction or arbitrator to have been caused by the negligence or willful misconduct of Client.
 - c. Neither party shall have an upfront duty to defend the other but shall reimburse reasonably incurred defense fees and costs to the extent of its indemnity obligation herein or as the parties otherwise agree in settlement
10. **Instruments of Service:**
 - a. Drawings, specifications, electronic data and other documents prepared by the Architect for this Project are instruments of service to be used solely for this Project. Architect shall be deemed the author and owner of Architect's instruments of service and shall retain all common law, statutory and other reserved rights, including copyrights
 - b. Upon execution of this Agreement, Architect grants to Client a nonexclusive license to reproduce Architect's Instruments of Service for purposes of designing, administering, using and maintaining the Project, provided Client shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license.
 - c. Except for the license granted above, no other license or right shall be deemed granted or implied. Client shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of Architect.
 - d. Client shall not use the instruments of service for future additions or alterations to this Project or for other projects, unless Client obtains the prior written agreement of Architect. Any unauthorized use, reuse or modifications of the instruments of service shall be at Client's sole risk and without liability to Architect, and Client agrees to defend, indemnify and hold harmless Architect from all claims and damages arising out of or purported to arise out of the use, reuse, or modification of the instruments of service.
11. **Submittals:** The Architect's review of submittals including shop drawings, product data and samples required by the Construction Documents shall be for the limited purpose of checking for general conformance with the visual and aesthetic design concept as expressed in the Contract Documents, and accessibility regulations. The Architect shall not be responsible for any deviations between the shop drawings and the field conditions, and/or Contract Documents. Architect's review of submittals shall not constitute approval of construction means, methods, techniques, schedule, sequences, procedures, safety precautions, nor shall it substantiate the accuracy and completeness of quantities, dimensions, and installation instructions. The Contractor shall review and approve submittals in writing before submitting them to the Architect.
12. **Performance:** Architect shall perform its services in a manner consistent with the level of care and skill ordinarily exercised by members of Architect's profession currently practicing in the same locality under similar conditions and with reasonable diligence and expediency consistent with sound professional practices ("Standard of Care"). Client and Architect are aware that many factors outside the Architect's control may affect the Architect's ability to complete the services to be provided under this Agreement. Client agrees that Architect is not responsible for damages arising directly or indirectly from any delays for causes beyond Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in a timely manner; failure of performance by Client or Client's contractors or Architects; or discovery of any hazardous substances or differing site conditions.
13. **Limitation of Liability:** In recognition of the relative risks and benefits of the Project to both Client and Architect relating to Architect's provision of services in accordance with this Agreement, the risks have been allocated such that Client agrees, that to the fullest extent permitted by law, the Architect's total liability to the Client, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes, including but not limited to the Architect's negligence, errors, omissions, and / or breach of contract shall not exceed the total compensation received by the Architect under this Agreement.
13. **Independent Contractor:** Client is engaging Architect as an independent contractor, and not as an agent, employee, director or partner of Client. The parties agree that this Agreement does not establish a joint venture, employment or agency relationship. Nothing contained in this Agreement or any action by Architect shall be construed to impose a fiduciary duty on Architect or create a fiduciary relationship between Architect and Client or between Architect and any third party.

- 15. Second Generation Space:** Client understands and acknowledges that in the case of second generation space, certain decisions are made by the Architect based on available documents and visual observations of readily exposed conditions. The Client agrees that the Architect shall not be held responsible for any additional work or cost that may be necessary to correct any work resulting from the discovery of latent conditions.
- 16. Hazardous Substances:** Client acknowledges that the Architect has no knowledge of and has no experience and is not being retained for the purpose of investigating, detecting, abating, replacing, remediating, or removing toxic hazardous contaminants, material, air pollutants, or water pollutants ("Hazardous Substances").
- 17. Payments:** Payment for professional services and expenses are normally billed upon completion of work in the case of short duration projects, or monthly for longer duration projects. Payments are due upon receipt of the Architect's Invoice. Invoices remaining unpaid after sixty (60) days from receipt shall be subject to a service fee of 10% per month, and Architect reserves the right to pursue all appropriate remedies. Client shall be responsible for all costs, including, without limitation, court costs, collection costs, reasonable attorneys' fees, expert fees, and all other costs allowed by law, which may be incurred by Architect in pursuit of unpaid Invoices. No deductions shall be made from Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which Architect has been adjudged to be liable. Inquiries and questions regarding any invoice shall be made within ten (10) working days of receipt of the invoice. Failure to notify Architect within the specified period will constitute a waiver to any claim with respect to the content or accuracy of the invoice, as well as acceptance of the services provided.
- 18. Termination:** Either party may terminate this Agreement upon not less than seven (7) calendar days written notice should the other party fail to substantially perform in accordance with this Agreement through no fault of the party initiating the termination. In addition, if the Project is abandoned by the Client for more than sixty (60) consecutive calendar days, the Architect may terminate this Agreement. Finally, if Client fails to make payments when due or otherwise is in breach of this Agreement, Architect may, at its option, suspend performance of services upon five (5) calendar days' notice to Client. Architect shall have no liability whatsoever to Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by Client. Upon payment in full by Client after a suspension, Architect shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension. If Client still fails to make payment or otherwise cure the breach following a suspension of services, Architect may terminate this Agreement upon an additional seven (7) days' notice.
- 19. Sole Corporate Remedy:** It is intended by the parties to this Agreement that Client's obligations and Architect's services in connection with the Project shall not subject Client's or Architect's individual shareholders, employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, Client and Architect agree that as the sole and exclusive remedy against the other, any claim, demand or suit shall be directed and/or asserted only against the business entities that are the parties to this Agreement and not against any of Client's or Architect's individual shareholders, employees, officers or directors except for acts of willful misconduct or as otherwise prohibited by law.
- 20. Governing Law; Dispute Resolution:** The parties agree to first try in good faith to settle any dispute arising out of or related to this Agreement by mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. The cost of the mediation service shall be born equally by the parties. If the claim or controversy is not settled by mediation, the claim or controversy may be resolved by final and binding arbitration, if the parties so agree, or by civil litigation. This Agreement shall be governed by the laws of the State of California, and all dispute resolution proceedings shall be venued in the county in which the services are rendered in the State of California unless the parties mutually agree otherwise.
- 21. Certificate of Merit Requirement:** The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the Architect unless the Client has first provided the Architect with a written certification executed by an independent consultant currently practicing in the same discipline as the Architect and licensed in the state where the Project is located. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the Standard of Care for an architect performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the Standard of Care. This certificate shall be provided to the Architect not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration.
- 22. Waiver of Consequential Damages:** Notwithstanding any other provision in this Agreement, and to the fullest extent permitted by law, neither Architect nor Client, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other for, or shall make, any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, damage to reputation or any other consequential damages either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.
- 23. Integrated Agreement:** California law governs this Agreement which represents the entire integrated agreement between the Architect and the Client. This Agreement supersedes all prior negotiations, representations and agreements. This Agreement may be amended only in writing signed by both the Architect and the Client.

Exhibit A

Community Center at City Hall Site

