

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH CNC ENGINEERING, INC.**

THIS AGREEMENT is made and entered into this 30th day of March, 2015 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and CNC Engineering, Inc., a California Corporation ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide engineering design and Caltrans permit approval 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 the City's Request for Proposal ("RFP"), attached hereto as Exhibit "A," and Consultant's Response to City's RFP (the "Response") attached hereto as Exhibit "B," both 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 fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed Nine Thousand, Nine Hundred Sixty-Five Dollars (\$ 9,965.00).

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 Project Schedule approved by City as set forth in the Proposal. The Project Schedule may be amended by mutual agreement of the parties. 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 36 months, ending on March 30, 2018, 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 "D" 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:

CNC Engineering
2121 Alton Parkway, Suite 200
Irvine, CA 92606
Tel: (949) 863-0588
Fax: (949) 863-0589
Attn: Sean Nazarie

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5017
Fax: (714) 754-5166
Attn: David Cho

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 "E" 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.

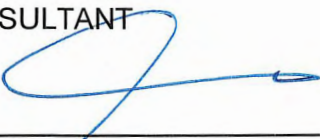
CITY OF COSTA MESA,
A municipal corporation



Chief Executive Officer

Date: 6/18/15

CONSULTANT



Signature

Date: March 30, 2015

Clement Calvillo, President
Name and Title



Social Security or Taxpayer ID Number

ATTEST:

Brenda Green 6/22/15
City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

Y. Z. Yolanda Summerhik
City Attorney

Date: April 16th, 2015

APPROVED AS TO INSURANCE:

Ryan P. [Signature]
Risk Management

Date: 4/20/15

APPROVED AS TO CONTENT:

David Cho
David Cho, Project Manager

Date: 3-26-15

DEPARTMENTAL APPROVAL

[Signature]
Ernesto Munoz, Public Services Director

Date: 6.17.15

EXHIBIT A

REQUEST FOR PROPOSALS



CITY OF COSTA MESA

CALIFORNIA 92628-1200

P.O. BOX 1200

FROM THE OFFICE OF THE DIRECTOR, DEPARTMENT OF PUBLIC SERVICES

February 5, 2015

SUBJECT: REQUEST FOR PROPOSALS – DESIGN SERVICES AND CALTRANS PERMIT APPROVALS FOR IMPROVEMENTS ON HARBOR BOULEVARD

Dear Consultant:

The City of Costa Mesa is requesting proposals for professional engineering services to design improvements on Harbor Boulevard in Costa Mesa. The scope of services consists of preparation of civil engineering design plans for the installation of wrought iron fence and river rock (in lieu of stamped concrete shown in exhibit) along Harbor Boulevard (northbound) between Gisler Avenue and I-405 and processing of State of California Department of Transportation (Caltrans) construction permits.

The attached Exhibits A and B show the existing and future (proposed) conditions within the limits of the project. The subject scope of services is intended as a "Turnkey" project to maintain a responsible and comprehensive base for all project development.

The scope of service for this project will include the following tasks

Task 1: Existing Plan Review, Survey and Preliminary Design

This task consists of defining the physical conditions and utilities within the project area, preparation of preliminary design plans and establishing the design features proposed for this project. The City will execute a California Environmental Quality Act (CEQA) approval and record with the County.

Task 2: Final Civil Engineering Design

This task includes the preparation of final plans and specifications necessary to construct all the elements of the project.

Task 3: Caltrans Permits

The consultant will be responsible for preparing all Caltrans forms including the Permit Application. The consultant shall efficiently address all project components as required to obtain authorization from Caltrans for Construction of the proposed project.

Content of Proposal

It is requested that the following be submitted with your proposal:

1. Project Understanding - provide a brief review of the project and any suggestions you might have to expedite the project or special concerns of which the City should be advised.
2. Work Plan – define the project approach, team assignments, and products.
3. Schedule – provide a detailed schedule indicating stages of work and time frames.
4. Comply with Professional Services Agreement requirements (see attached PSA).
5. Submittal of **three (3)** duplicate proposals.

Fee Schedule

The professional services contract will not be awarded based upon competitive bidding, and it is desired that fees be submitted separately. The fee schedule should show the hourly cost of personnel, with a total not-to-exceed amount for the project. The consultant's cost proposal for the prime and subcontractors should contain a breakdown of all cost components including labor base rate, other direct costs, overhead, and fees.

Total Not To Exceed Price - \$ _____

Contract Changes

Any change in the scope of work resulting in a contract increase or decrease in fee shall be approved by the City **in writing prior** to commencement of actual change in work. No fee adjustment will be allowed unless said **prior** approval is authorized exclusively **in writing** by the City, without exception.

Should your firm be interested in submitting a proposal for this project, please forward to the City of Costa Mesa, Transportation Services Division, 4th floor City Hall, **on or before 5:00 p.m., February 20, 2015**. If additional information is required, please contact me, at (714) 754-5032, or via email at raja.sethuraman@costamesaca.gov.

Sincerely,



Raja Sethuraman
Transportation Services Manager

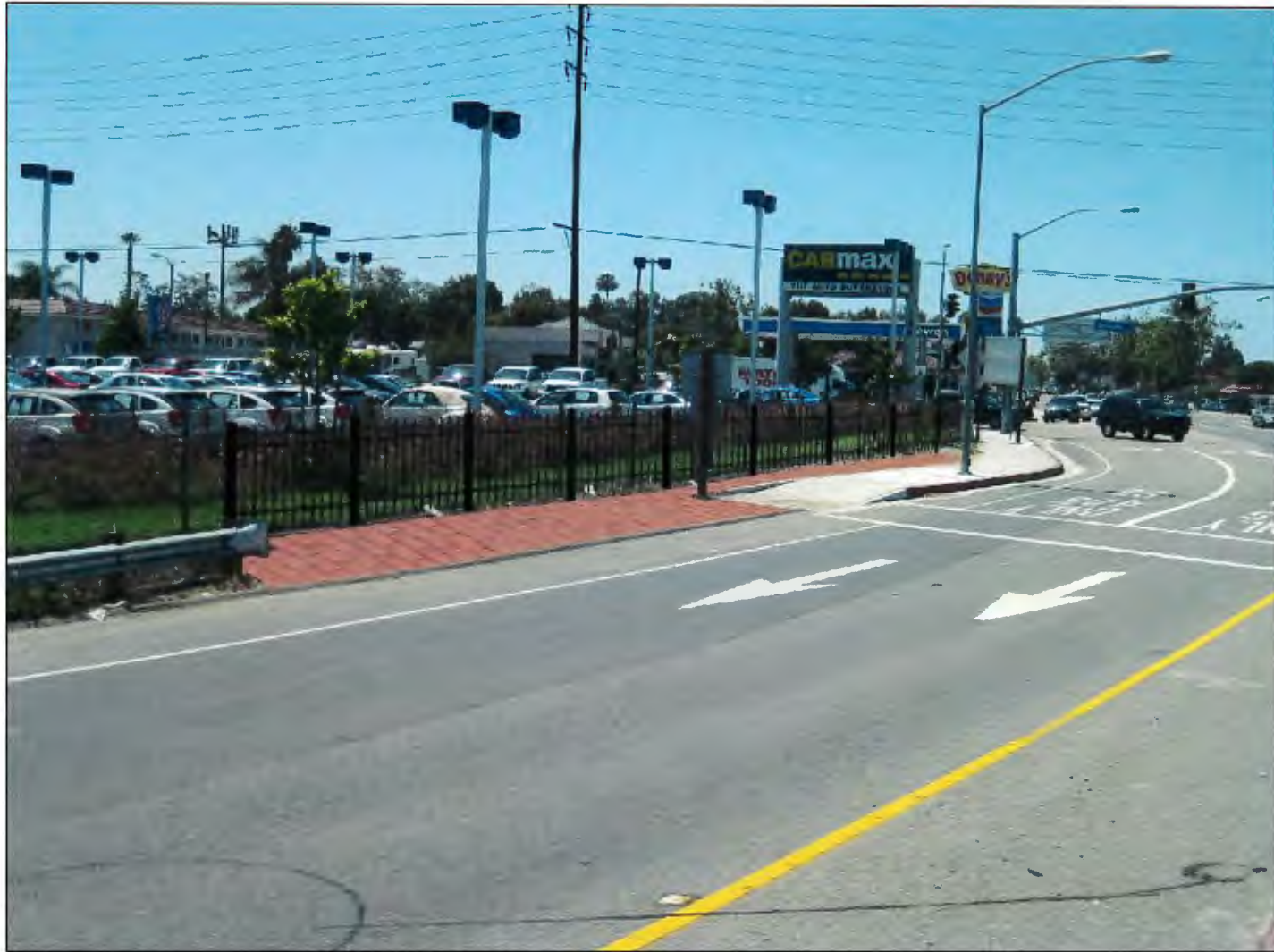
Attachments: 1 – Exhibit A: Existing Conditions
 2 – Exhibit B: Proposed Concept
 3 - Sample Professional Services Agreement

c: Ernesto Munoz, Director, Department of Public Services
 Pritam Deshmukh, Associate Engineer



Harbor Boulevard Improvement

EXHIBIT A - EXISTING CONDITION



Harbor Boulevard Improvement

EXHIBIT B - PROPOSED CONDITION

EXHIBIT B

CONSULTANT'S PROPOSAL

Proposal for
DESIGN SERVICES AND CALTRANS PERMIT APPROVALS FOR
IMPROVEMENTS ON NORTHBOUND HARBOR BOULEVARD
BETWEEN GISLER AVENUE AND I-405



February 20, 2015

Prepared for:



City of Costa Mesa
Transportation Services Division, 4th Floor
77 Fair Drive, Costa Mesa, CA 92628-1200

Prepared by:



2121 Alton Parkway, Suite 200
Irvine, California, 92606-3110
(949) 863-0588
www.cnc-eng.com



February 20, 2015

P15-007

City of Costa Mesa
Transportation Services Division
77 Fair Drive, 4th Floor
Costa Mesa, CA 92628-1200

Subject: Design Services and Caltrans Permit Approvals for Improvements on Harbor Boulevard

CNC Engineering (CNC) appreciates the opportunity to submit our technical proposal to provide professional consulting services for the preparation of plans, specifications, opinion of Probable Construction Cost (PS&E) and securing design approval from Caltrans for construction of wrought iron fence and river rock along the northbound harbor Boulevard between Gisler Avenue and I-405.

CNC recently completed the PS&E for Harbor Boulevard Rehabilitation from Baker Street to South Coast Drive (City Project No. 12-01). The design survey and improvement plans for that project included a portion of this site. CNC also successfully obtained permits from Caltrans District 12 for field survey and construction within Caltrans right-of-way. Other street beautification and transportation improvement projects that required Caltrans permitting within the City of Costa Mesa completed by CNC include Joann Street Bike Trail, I-405/Harbor Blvd Interchange Improvement Project, I-405/Fairview Interchange Improvement, SR-55 Extension Mapping, Downtown Gateway Landscape Improvements on SR-55 and Sound Wall/ Retaining Wall Improvements on Fairview Road between McCormack Lane and I-405.

CNC is prepared to comply with the requirements of the City of Costa Mesa standard Professional Services Agreement in the RFP. Should CNC have the good fortune of being selected as the most qualified team for this project, we are available to meet with you to discuss any portion of the scope/schedule/fee in our proposal. Please contact me with any questions about any part of our proposal at any time.

Respectfully Submitted,
CNC Engineering

A handwritten signature in black ink, appearing to read 'S. Nazarie'.

Shahab (Sean) Nazarie, P.E.
Director of Engineering



TABLE OF CONTENTS

Section 1 Project Understanding..... 1

Section 2 Work Plan 3

Section 3 Schedule..... 7

Fee Schedule (Submitted Separately)

SECTION 1 PROJECT UNDERSTANDING

A. PROJECT UNDERSTANDING

The City of Costa Mesa Transportation Services Division is soliciting proposals for the preparation of plans, specs and estimates (PS&E) for construction of the following:

- Approximately 180 lineal feet of wrought iron fence (WIF) along the northbound Harbor Blvd right-of-way between Gisler Avenue and the I-405 SB on-ramp
- Approximately 270 square feet of river rock in the parkway between the existing curb ramp and the front face of the end post of the existing metal beam guard rail (Photo 3).

The scope of work also includes preparation and processing of the encroachment permit applications for field survey and construction for approval by Caltrans District 12.

Based on a comprehensive review of the RFP dated February 5, 2015 and investigation of the site, the following is a summary of our project understanding along with several key issues to consider toward successful completion of each project.

This particular stretch of Harbor Blvd is used mostly by residents and commuters for access to the 405 freeway and to residences, work and shopping opportunities. The project site is located adjacent to a Carmax auto dealership. However, the property line is approximately between 5 to 10 feet behind the existing chain link fence. Therefore, the project is not expected to encroach into the dealership property.

Key Issues:

- Access to the maintenance path between the existing chain link fence and hedge row (Photo 1) will be considered for the layout design of the proposed WIF.



Photo 1. Access to Maintenance Path behind Existing Chain Link Fence

SECTION 1 PROJECT UNDERSTANDING

- Disposition of existing features (Photo 2) within the limits of the proposed work will be identified on the plans.



Photo 2. Existing Trail Blazer Sign within the Proposed River Rock Improvements Must be Protected in place

- The northerly limit of improvements will be verified with the City prior to submittals to Caltrans.

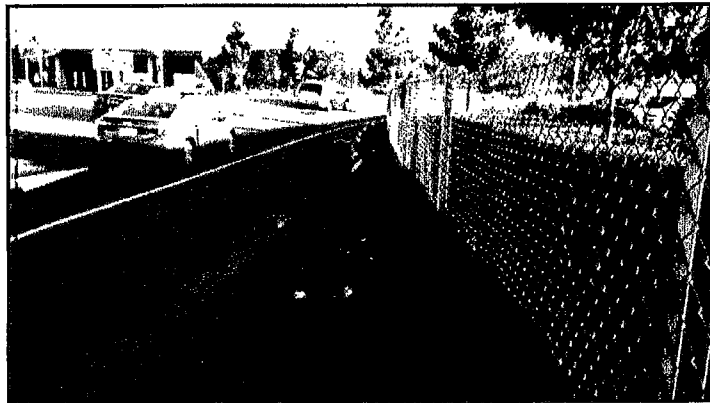


Photo 3. River Rock and WIF Will Terminate Near the Existing MBGR End Post

- Survey work and construction within Caltrans right-of-way will require separate encroachment permits. CNC will prepare traffic control plans and process them for approval by the City and Caltrans.
- Construction of the WIF may require temporary closure of the sidewalk. Requirements for signage to re-route pedestrians during construction will be clearly detailed under special provisions for Traffic Control.
- CNC will document pre-project conditions within public right-of-way and adjacent private property for future reference. Documentation will include photographs, design survey and field notes.



SECTION 2 WORK PLAN

Based on our understanding of the project, the following Scope of Work defines specific tasks required to provide the City of Costa Mesa with complete contract services and supporting project records.

Task 1. Existing Plan Review, Survey and Preliminary Design

Meetings & Coordination- Prior to beginning the work tasks, CNC Engineering will assemble the project team for a project kickoff meeting. The team will be comprised of the City of Costa Mesa staff and CNC Engineering project staff. The purpose of this meeting will be to review the scope of work, the project schedule and to finalize any administrative details such as point-of-contact for each team member. CNC will be available to attend additional coordination meetings as necessary. CNC will prepare and distribute all meeting minutes and will follow up on all action items.

Data Collection- This task also includes collecting available record drawings, tract maps and parcel maps and conducting field reviews to investigate and evaluate existing conditions.

Survey & Mapping- CNC will research the available bench marks at Caltrans and County of Orange and locate the closest and latest bench mark to each project. CNC will also research recorded tract and parcel maps at the County and the City to reference the centerline bearing of each street to the latest recorded tract or parcel map nearest to each project. CNC will verify the primary horizontal and vertical controls in the field and establish new secondary controls.

Field survey will consist of cross sections at 25-foot intervals, with elevations at top of curb, back of sidewalk, curb ramps, beginning, middle of curve and end of curb returns. Survey will also include all surface culture within the project limits including but not limited to meter boxes, utility poles and valve cans, trees, grass, fences, retaining curbs, retaining walls, surface utility features such as manholes and catch basins.

CNC will determine the street right-of-way and easements from available parcel and tract maps. This proposal does not include boundary survey and/or right-of-way engineering services. Based on our current knowledge of the site and the project goals, CNC does not see any reason to extend the field survey beyond the public right-of-way. However, we will confirm the survey limits with the City prior to start of work. If it becomes necessary to extend the survey onto the adjacent dealership property, CNC will submit a draft notice of survey work to the City for review. Upon approval, the notice will be printed out on City letterhead and sent out to the business by certified mail. CNC will not perform survey work on the property until after we have the certified return receipt in hand.

All survey points will be data collected and electronically transferred to our computer for preparation of the topographic mapping at 1"=20' and 1.0-foot contour intervals. The map will also be augmented by addition of existing right-of-way and lot lines and existing utilities (See Utility Investigation below) obtained from record drawings.



SECTION 2 WORK PLAN

Utility Investigation- CNC will also perform utility investigation based on the guidelines specified in the City of Costa Mesa's "**Utility Coordination Procedures**". CNC will compile a list of Dig Alert member agencies in the area and augment this list based on information from the City as well as previous projects performed by CNC in the City of Costa Mesa. CNC will contact the utilities on this list and notify each utility company of the City's proposed plans, proposed schedule and request copies of record drawings of the existing utilities. Utilities shown on record drawings will be added to the base map.

Preliminary Design- Using the base map, CNC will prepare a layout showing the WIF alignment and limits of river rock in the parkway. The plan will also show the disposition of existing facilities, such as removal of existing chain link fence or relocation or protection of existing signage. This work will also include preparation of a preliminary statement of construction cost. Preliminary plans and estimates will be submitted for City review. CNC will be available to discuss the City's review comments and incorporate all agreed upon revisions into the final design.

Task 2. Final Civil Engineering Design

Plans, specifications and estimates will comply with the standard drawings and specifications of the City, Caltrans, APWA and other agencies as applicable. CNC will also prepare and submit two Resident Engineer's files. These files will contain preliminary and final construction quantities and estimates and updates, color coded set of plan and profile with showing different colors for each item of construction with dimensions and quantities for each item on each sheet and total quantities on the first sheet, field work information, meeting minutes, utility log and correspondence, survey information, as well as any other information and documents listed in the RFP.

Task 2.1 Plans

This task will include structural design of the fence post footing based on the recommended guidelines in the International Building Code and preparation of a complete set of construction drawings. The required number of copies of the plans and structural design calculations will be submitted for review and approval by the various departments within the City. All improvement plans will be prepared in accordance with the City of Costa Mesa standards. These preliminary and final improvement plans will consist of the following:

Title Sheet - Indicating name of project, a vicinity map and a location map showing the specific location of the project, general notes, utility agencies' contacts and phone numbers, a sheet index and a list of the construction notes. If necessary or directed by the City, the general notes will be prepared on a separate sheet.

Plan and Profile Sheets – The drawings on 22" x 34" four mil thick, erasable writing Mylar will show the proposed construction in plan and profile at a scale of 1"=20' horizontally and 1"=2' vertically. The plan will show the horizontal layout line of the WIF with stations, the layout information for the river rock and disposition of existing features such as removal of the existing chain link fence and adjusting surface utilities to grade.



SECTION 2 WORK PLAN

The profile will show the top of footing (TF) elevation at each end and each step.

Detail Sheets - Typical sections and necessary details for construction of the WIF and footings will be shown on detail drawings at 1"=10' scale.

Task 2.2 Specifications

The specifications will be consistent with the City of Costa Mesa format and will be based on the latest edition of Caltrans Standard Specifications and Standard Specifications for Public Works Construction (Green Book). The specifications will include traffic control, detour information, requirements for adequate signage for pedestrian safety and re-routing and proposal forms consistent with current City projects. CNC will also incorporate the Standard General Provisions and Construction Contract Agreement that will be furnished by the City into the construction documents.

Task 2.3 Quantity and Cost Estimates (QCE)

CNC will prepare an itemized quantity estimate and opinion of probable construction cost. CNC will also prepare a bidder's proposal sheet for use in project bidding as required by the City. The QCE will be prepared in EXCEL. The final submittal to the City will include a color coded set of plans showing a different color for each construction item with dimensions, areas and quantities for each sheet and showing total quantities for each item on the first sheet. The final submittal will also include quantity take off sheets.

Task 2.4 Project Document Submittal and Plan Information

CNC will submit copies of the construction plans to affected utility companies. If necessary, CNC will request pot holing of the utility company's own facilities to locate vertically the existing underground utilities. CNC survey crews will shoot elevations of exposed existing utility facilities. CNC will identify any conflicts with the project and formulate a solution and strategy for resolution of the conflict. CNC will obtain written approval from utility companies for any required relocation, modification and clearance of existing facilities. All utility correspondence will be submitted to the City. CNC will maintain a utility log with the names and contact information for all the utilities along with the dates and summary of all correspondence with each purveyor.

CNC will submit the plans, specs and estimates plus copies of supporting structural calculations for review and final approval by the City. Final plans, specifications, field notes, calculations and correspondence will be turned over to the City upon design approval by the City. An electronic copy of final construction documents will be supplied to the City on CD. The document files will be prepared using Windows Microsoft Word Office. Final CADD drawings will be plotted on 4 mil thick Mylar, with the final CADD files on CD in the latest version of AutoCAD.

SECTION 2 WORK PLAN

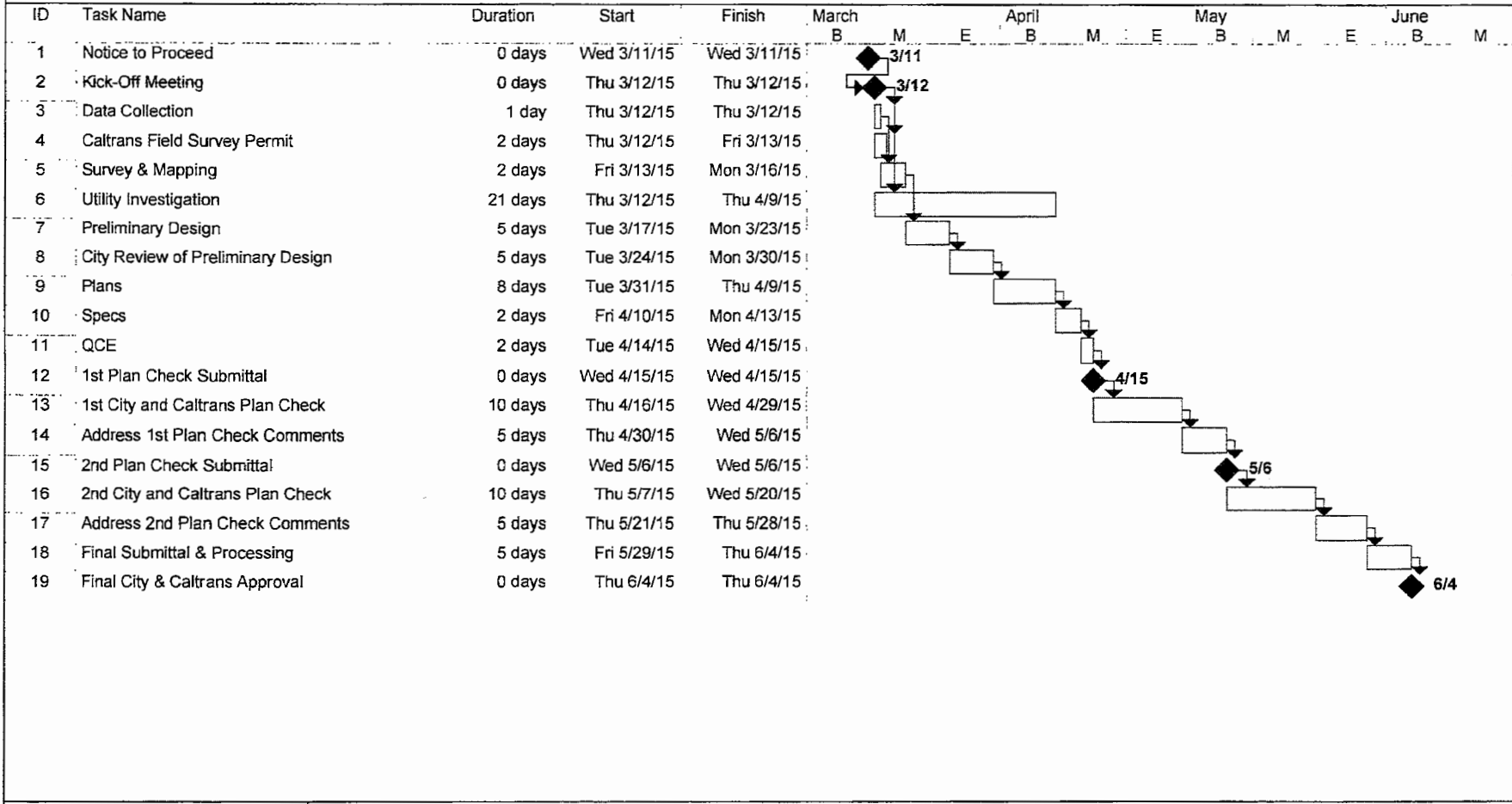
Task 3. Caltrans Permits

We understand there is no Federal or State funding for this project. Therefore, there is no requirement to conduct a preliminary environmental study for Caltrans approval. The scope of work under this task will consist of the following:

- **Identify Caltrans Right-of-Way-** Caltrans right-of-way along Harbor Blvd at the I-405 interchange will be determined based on the available record maps at Caltrans, City of Costa Mesa and County of Orange. *CNC performed the field survey and right-of-way engineering services for the I-405/Harbor Blvd Interchange Improvement Project in 2004 and prepared the PS&E for Harbor Boulevard Rehabilitation (City Project 12-01).*
- **Field Reviews and/or Meetings with Caltrans-** CNC will be available to meet with representatives of Caltrans in the field or at District 12 offices to discuss the project.
- **Encroachment Permit for Field Survey-** CNC will request a letter of authorization from the City of Costa Mesa to apply for an encroachment permit for field survey within the Caltrans right-of-way. CNC has recently obtained similar permits from District 12 for design survey of *I-405/Harbor Blvd Interchange Improvement Project, SR-55 Gateway Monument, I-405/Fairview Interchange Improvement and Harbor Boulevard Rehabilitation (City Project 12-01)*. We have an excellent working relation with the Permits Division at District 12 and we anticipate having the permit ready within two (2) working days after submitting the completed application.
- **Construction Permit-** CNC will complete the encroachment application for the proposed construction within Caltrans jurisdictional boundary. The completed application along with copies of the PS&E will be submitted for Caltrans review and approval.



SECTION 3. PROJECT SCHEDULE FOR DESIGN SERVICES & CALTRANS APPROVALS FOR IMPROVEMENTS ON HARBOR BLVD



Project: Schedule Date: Wed 2/18/15	Task		Milestone	◆	External Tasks	
	Split		Summary		External Milestone	◆
	Progress		Project Summary		Deadline	

EXHIBIT C
FEE SCHEDULE

EXHIBIT D

CERTIFICATES OF INSURANCE

EXHIBIT E

CITY COUNCIL POLICY 100-5

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;

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

- b. Establishing a Drug-Free Awareness Program to inform employees about:
 - 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.