

**PROFESSIONAL SERVICES AGREEMENT
CITY OF COSTA MESA
WITH
KEN OKAMOTO AND ASSOCIATES**

THIS AGREEMENT is made and entered into this 18th day of August, 2014 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and KEN OKAMOTO AND ASSOCIATES, a California Incorporation (“Consultant”).

WITNESSETH:

- A. WHEREAS, City proposes to utilize the services of Consultant as an independent contract to perform engineering services for structural calculation of Police Substation, as more fully described in Consultant’s Proposal attached as Exhibit “A”; 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 California Government Code, Sections 1090-1092, 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, a copy of which is 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. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City of Costa Mesa, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the department. 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 Clerk 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. As compensation for the provision of services outlined in Exhibit "A" and in accordance with this agreement, Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "A," attached hereto and incorporated by reference. Consultant's total compensation shall not exceed four thousand Dollars (\$ 4,000.00).

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 City supervisor 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 as of the date the invoice is created. 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 Exhibit "C," attached hereto and incorporated herein by this reference. 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 three (3) months ending on November 18, 2014, unless previously terminated as

provided herein or as otherwise agreed to in writing by the parties. At the end of the term period, Consultant and City may mutually agree to, in writing, to renew the contract for up to two (2)

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 as to 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.

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

6.0. GENERAL PROVISIONS

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

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

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

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

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

6.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, 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:

Ken Okamoto and Associates, Inc.
3186-F Airway Ave.
Costa Mesa, CA 92626
Tel: 714-444-2422
Fax: 714-444-2122
Attn: Ken Okamoto

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: 714-754-5378
Fax: 714-754-5028
Attn: Fariba Fazeli

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 "B" 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 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, 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



Public Services Director, City of Costa Mesa

Date: 7-8-14

CONSULTANT



Signature

Date: 8/11/14


Ken Okamoto, President

Name and Title

33-0162916

Social Security or Taxpayer ID Number

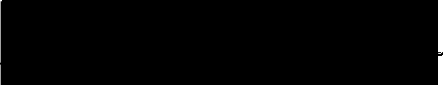
APPROVED AS TO FORM:



City Attorney

Date: 8/20/14

APPROVED AS TO INSURANCE:



Risk Management

Date: 8/13/14

APPROVED AS TO CONTENT:



Project Manager

Date: 8-13-14

EXHIBIT A
CONSULTANT'S PROPOSAL AND FEE SCHEDULE



KEN OKAMOTO & ASSOCIATES, INC.
STRUCTURAL ENGINEERS

TO: CITY OF COSTA MESA
77 FAIR DRIVE
COSTA MESA, CA 92628
"Client"

DATE: JULY 31, 2014

ATTN: FARIBA FAZELI, CITY ENGINEER

Gentlemen:

Following is our proposal to provide engineering services as indicated below for:
POLICE SUBSTATION COLUMN REMOVAL
567 W. 18TH STREET
COSTA MESA, CA 92627
(hereinafter called the "Project")

ONLY THOSE SERVICES CHECKED BELOW ARE TO BE PROVIDED:

- Structural calculations for major structural elements of the Project.
- Sketches
- Structural drawings.
- Draft of specifications for such structural sections as needed from which the Client may prepare final overall job specifications.
- Reviewing of structural shop drawings, for off-site prefabricated structural elements, specifically excluding shop or placement drawings for concrete reinforcement steel. Please note that shop drawings are reviewed only for general conformance with the intent of the design and general compliance with the construction contract. Dimensions, quantities and other considerations are not reviewed.
- (1) Visit to the site.
- Structural corrections as required by the governmental agency having jurisdiction of the Project.
- Consultation with the advisement of the Client with regard to structural requirements.
- Reviewing and signing of structural drawings subject to the limitations and provisions set forth in Number 3 reverse hereof.
- Other:

THE FEE SHALL BE: \$ 4,000.00

[\$ 2,000.00/SITE SURVEY & AS-BUILT FRAMING FOR ROOF &
\$ 2,000.00/DRAWINGS & CALCULATIONS FOR FOUNDATION AND
AND FRAMING PLAN]

The payment schedule for the fee shall be progressive monthly invoices.


POLICE SUBSTATION COLUMN REMOVAL - COSTA MESA, CA

ADDITIONAL TERMS AND CONDITIONS

1. All services not marked on the first page shall be excluded from this contract, specifically excluding, but not limited to the following:
 - (a) Soils report preparation.
 - (b) Sampling and testing of materials.
 - (c) Civil engineering and landsurveying.
 - (d) Changes in structural designs already accomplished after approval of the preliminaries.
 - (e) Blueprinting.
 - (f) The Engineer has not been retained or compensated to provide design and construction review services pertaining to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the contractor to perform his work; omitted services include, but are not limited to shoring, scaffolding, under-pinning, temporary retention of excavations and any erection methods and temporary bracing.
 - (g) Phone calls outside of 714 area. Travel other than to the Client's office.
 - (h) Approval of concrete mix designs.
2. Engineer will in no way be responsible for how the Contractor's (work) is performed, job safety, methods of performance or timeliness in the performance of his work. The Client shall have inserted in his contract with the owner a Hold Harmless clause which will protect the Client and Engineer from any and all liability for any act of omission or commission on the part of the Contractor and/or any of his sub-contractors.
3. Engineer shall not be liable for errors made by Client, his agents or employees, in the transposing or recopying of engineer's calculations and sketches onto other drawings. Client further agrees to indemnify and hold engineer harmless from any and all claims or liabilities arising from such errors.
4. Contractor shall be required to obtain and maintain, for the full period of the contract and guarantee "All-Risk" insurance to ensure protection required in paragraph 2 above. Said insurance shall be in a form which is acceptable to the Engineer, and must include the Engineer as additional insured.
5. The Client agrees to limit the Engineer's liability to the Client and to all construction contractors and sub-contractors on the project, due to the Engineer's negligent acts, Errors or Omissions such that the total aggregate liability of the Engineer to all those names shall not exceed two hundred fifty thousand dollars or the amount of the Engineer's fee, whichever is larger.
6. Engineer's work shall be based on information supplied to him by Client or at the Client's direction. Engineer shall not be held responsible for accuracy of such information of omission pertinent information.
7. The Engineer does not guarantee the accuracy of any statement or estimates of probable construction cost.
8. Special computer investigations (such as code-required dynamic analysis) are not included.
9. Engineer shall not be held answerable for damages caused by delays in his performance which arise out of events beyond his control.
10. Client agrees to hold the Engineer harmless from errors or omissions the Client creates while carrying out his duties.
11. All Drawings, Specifications and other work products of the Engineer for this Project are instruments of service for this Project only and shall remain the property of the Engineer whether the project is completed or not. Re-use of any of the instruments of service of the Engineer by the Owner or Architect on extensions of this Project or on any project without the written permission of the Engineer shall be at their own risk and they agree to defend, indemnify and hold harmless the Engineer from all claims, damages, and expenses including attorney's fees arising out of such unauthorized re-use of the Engineer's instruments of service by the Owner or by others acting through the Owner. Re-use fee negotiable.
12. Delinquent payments shall bear interest from the due date of the payment of the rate of eighteen (18%) percent per annum simple interest, or the maximum legal rate. Due dates shall not be later than 10 days following the statement date. Any payment not received within 30 days of the statement date will be cause for cessation of all work on the project by this office.
13. Should any party bring legal action to enforce any provisions of this agreement, the prevailing party shall recover the costs of suit and reasonable attorney's fees.
14. If the project is put on "Hold" for any reason for 30 days or more, through no fault of the Engineer, the fee on the balance of the work shall be renegotiated.
15. This proposal is valid for 90 days only from the date on the front. If there is no project in progress within 90 days, this proposal is void.
16. Inasmuch as the remodeling and/or rehabilitation of an existing building requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate or serviceable portions of the building, the owner agrees that, except for negligence on the part of the design professional, the owner will hold harmless, indemnify and defend the design professional from and against any and all claims arising out of the professional services provided under this agreement.
17. "If it is agreed that the professional services of the engineer do not extend to or include the review or site observation of the contractor's work or performance, the owner will defend, indemnify and hold harmless the engineer from any claim or suit whatsoever, including but not limited to all payments, expenses or costs involved, arising or alleged to have arisen from the contractor's performance or the failure of the contractor's work to conform to the design intent and the contract documents. The engineer agrees to be responsible for his own or his employees' negligent acts, errors or omissions."

The above proposal, including all terms and conditions set forth are acceptable and agreed to:

Sincerely,



7/31/14

Client's Acceptance

Date

Ken Okamoto

Date

Please sign and return one copy. If this proposal is not signed and returned within ten days, all the conditions stated will prevail.

EXHIBIT B
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.

FAZELI, FARIBA

From: Aimee LaRue <aimee@cornerstonespecialty.com>
Sent: Thursday, August 07, 2014 11:27 AM
To: FAZELI, FARIBA
Cc: tiffanys@kenokamoto.com
Subject: Certificate of Insurance, KEN OKAMOTO & ASSOCIATES
Attachments: Form080720141125.PDF

Good morning Fariba:

Please find the attached certificate and endorsement for the above referenced. If you have any questions or need anything further please let me know. Thank you!

Sincerely,

Aimee La Rue, CIC, CISR

Account Executive
Cornerstone Specialty Insurance Services, Inc.
14252 Culver Drive, #A299, Irvine, CA 92604
Phone (714) 731-7700 ~ Fax (714) 731-7750
Aimee@cornerstonespecialty.com



a/e ProNet Blog: <http://aepronet.wordpress.com/>



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/7/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Cornerstone Specialty Insurance Services, Inc. 14252 Culver Drive, A299 Irvine CA 92604	CONTACT NAME: Aimee La Rue	
	PHONE (A/C, No. Ext): (714) 731-7700 FAX (A/C, No.): (714) 731-7750 E-MAIL ADDRESS: aimee@cornerstonespecialty.com	
INSURED KEN OKAMOTO & ASSOCIATES 3186-F Airway Avenue Costa Mesa CA 92626	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: RLI Insurance Company	13056
	INSURER B: Liberty Insurance Underwriters,	19917
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X		PSB0001734 PER FORM #PPB3040610 AS REQUIRED BY WRITTEN CONTRACT CONTRACTUAL LIAB INCLD	9/1/2013	9/1/2014	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> ADDTL INSURED/PRIMARY						PERSONAL & ADV INJURY \$ INCLUDED
	<input checked="" type="checkbox"/> BLNKT WVR OF SUBRO						GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
A	AUTOMOBILE LIABILITY			PSB0001734	9/1/2013	9/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS						\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	<input type="checkbox"/> OCCUR						\$
	<input type="checkbox"/> CLAIMS-MADE						\$
	DED RETENTION \$						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A		PSW0001571	9/1/2013	9/1/2014	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						OTH-ER
	If yes, describe under DESCRIPTION OF OPERATIONS below						
							E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	PROFESSIONAL LIABILITY			AEA100909-0002	9/1/2013	9/1/2014	EACH CLAIM \$1,000,000
	Claims Made						ANNUAL AGGREGATE \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 RE: Structural Analysis of Police Substation @ 567 W. 18th Street. Certificate Holder and its directors, officers, employees, and agents are Additional Insured for General Liability but only if required by written contract with the Named Insured prior to an occurrence and as per attached endorsement. Coverage is subject to all policy terms and conditions. *30 days notice of cancellation, except for 10 days notice for non-payment of premium. For Professional Liability coverage, the aggregate limit is the total insurance available for all covered claims reported within the policy period.

CERTIFICATE HOLDER **CANCELLATION**

FARIBA.FAZELI@costamesaca. City of Costa Mesa 77 Fair Drive Costa Mesa, CA 92626	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Aimee La Rue/AIMEEL

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET ADDITIONAL INSURED
(ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to WHO IS AN INSURED (Section II):

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the LIMITS OF

INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

COMMERCIAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.