

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
HOWROYD-WRIGHT EMPLOYMENT AGENCY, INC.  
DBA APPLEONE EMPLOYMENT SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into as of the 8th day of December, 2020 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and HOWROYD-WRIGHT EMPLOYMENT AGENCY, INC., a California corporation DBA APPLEONE EMPLOYMENT SERVICES ("Consultant").

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide temporary staffing 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 perform the services herein contemplated; and

C. 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; and

D. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

E. WHEREAS, City and Consultant intend and desire that this Agreement be effective retroactive to the Effective Date to encompass services provided since the Effective Date.

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 and Order of Precedence. Consultant shall provide the temporary staffing services described in Exhibit "A," attached hereto and incorporated herein. City and Consultant agree that such services are subject to the Special Terms of Consultant, attached hereto as Exhibit "B" and incorporated herein. The order of precedence for any provision or general section (e.g., Insurance) in one document that conflicts with another provision or general section in another document is as follows (from top to bottom):

- This Agreement
- Any subsequent amendment to this Agreement after the Effective Date
- Exhibit B, Special Terms of Consultant
- Exhibit A, Staffing Services and Rate Schedule
- Exhibit C, City Council Policy 100-5

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields

and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

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

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory (except that Consultant has no obligation under this Agreement to provide a credit for any services performed by temporary personnel assigned to City); 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, except that this indemnity shall not apply to the acts or omissions of temporary personnel assigned to City.

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. 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 or destroyed by Consultant at City's request upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit A. Consultant's total compensation shall not exceed Twenty-Five Thousand Dollars (\$25,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services unless the City, through an authorized officer, prior to Consultant performing the additional services, approves such additional services in writing. Additional services shall be reflected in an amendment to this Agreement executed by the City and Consultant. 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 weekly invoices to the City for approval on a progress basis. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

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

## **3.0. TIME OF PERFORMANCE**

3.1. Commencement. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement.

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 be effective retroactive to the Effective Date and continue through April 30, 2021, 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 or Consultant's temporary personnel assigned to City in the 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 or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery and b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Howroyd-Wright Employment Agency, Inc.  
dba AppleOne Employment Services  
16371 Beach Blvd Suite 240  
Huntington Beach, CA 92647  
Tel: 714-596-7780  
Attn: Rich H. Hagmann,  
Vice President – Operations & Client Services

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5359  
Attn: Christine Tsao

Courtesy copy to:

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

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

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

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

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, and 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 to the extent caused by the negligence or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in the performance of the work undertaken pursuant to this Agreement. 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 active negligence or willful misconduct of the City.

6.10. Limitation of Liability. To the maximum extent permitted by applicable law, neither City nor Consultant shall have any liability for any indirect, consequential, special or incidental damages, damages for loss of profits or revenues, whether in an action in contract or tort, even if such party has been advised of the possibility of such damages.

6.11. 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.

6.12. 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.

6.13. 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.

6.14. 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.

6.15. 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.



6.16. 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 sub-consultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.17. 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.

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

6.19. 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.

6.20. 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.

6.21. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.22. 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.

6.23. 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.

6.24. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. 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.

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

6.26. 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.

6.27. 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.

6.28. Counterparts and Electronic Signatures. 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. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

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

[Signatures appear on following page.]

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

**CONSULTANT**

*Michael A. Hoyal*  
Michael A. Hoyal  
Chief Financial Officer

Date: April 6, 2021

**CITY OF COSTA MESA**

*Carol Molina*  
Carol Molina  
Purchasing Officer

Date: April 14, 2021

**ATTEST:**

*Brenda Green 4/27/2021*  
Brenda Green  
City Clerk



**APPROVED AS TO FORM:**

*Kimberly Hall Barlow*  
Kimberly Hall Barlow  
City Attorney

Date: 4/22/21

**APPROVED AS TO INSURANCE:**

*Ruth Wang*  
Ruth Wang  
Risk Management

Date: 4/15/21

**APPROVED AS TO CONTENT:**

*Christine Tsao*  
Christine Tsao  
Project Manager

Date: 4/15/21

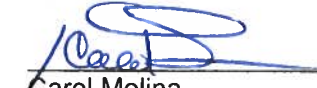
DEPARTMENTAL APPROVAL:



\_\_\_\_\_  
Raja Sethuraman  
Public Services Director

Date: \_\_\_\_\_

APPROVED AS TO PURCHASING:



\_\_\_\_\_  
Carol Molina  
Finance Director

Date: April 14, 2021

**EXHIBIT A**

**STAFFING SERVICES AND RATE SCHEDULE**

**EXHIBIT A**

**STAFFING SERVICES AND RATE SCHEDULE**

Billing Rates shall equal the Employee Rate plus mark-up rate. Classifications requested that are not specifically listed in this Exhibit shall be quoted, in writing, on a case by case basis. Pursuant to the requirements of the Affordable Care Act ("ACA") and beginning on January 1, 2015, a Health Coverage Premium ("HCP") will be added to the hourly rate of any employee that is offered and subsequently accepts health coverage from Consultant. Based on regional pricing fluctuations and the City's cost to provide coverage to full-time employees, the HCP for all Temporary Employees (regardless of agency) shall be \$2.78. This rate shall increase on January 1<sup>st</sup> of each subsequent year by 6%.

The Total Hourly Compensation for a Temporary Employee shall be equal to the following:

*(Straight Time Employee Rate + Mark-Up Percentage) + (Applicable HCP)*

1. General Classifications.

Classification	Straight Time Range Employee Rate			Mark-Up Rate %
		to		
Administrative Analyst	\$26.29	to	\$32.09	55.00%
Administrative Assistant	\$27.29	to	\$29.99	55.00%
Data Entry Technician	\$23.79	to	\$24.79	55.00%
Office Assistant	\$21.79	to	\$23.09	55.00%
Office Specialist	\$26.49	to	\$28.09	55.00%
Store Clerk	\$22.59	to	\$24.59	55.00%
Other Positions	TBD	to	TBD	55.00%

2. Finance/Accounting Classifications.

Classification	Straight Time Range Employee Rate			Mark-Up Rate %
		to		
Accountant	\$28.59	to	\$34.09	55.00%
Accounting Specialist	\$33.59	to	\$35.59	55.00%
Collection Specialist	\$21.79	to	\$24.79	55.00%
Financial Services Manager	\$24.29	to	\$26.29	55.00%
Procurement Specialist	\$24.79	to	\$28.79	55.00%
Senior Accountant	\$25.79	to	\$31.79	55.00%
Senior Accounting Assistant	\$24.78	to	\$27.49	55.00%

3. Human Resources Analyst Series.

Classification	Straight Time Range Employee Rate			Mark-Up Rate %
		to		
Associate Human Resources Analyst	\$30.79	to	\$37.79	55.00%
Human Resources Analyst	\$37.79	to	\$40.79	55.00%
Senior Human Resources Analyst	\$42.79	to	\$55.79	55.00%
Principal Human Resources Analyst	\$42.79	to	\$57.78	55.00%

4. IT Classifications.

Classification	Straight Time Range			Mark-Up Rate %
	Employee Rate			
Data Analyst	\$32.79	to	\$40.78	55.00%
Java Developer	\$52.79	to	\$57.78	55.00%
.NET Developer	\$47.78	to	\$52.78	55.00%
Database Administrator	\$46.79	to	\$50.79	55.00%
PowerBuilder Developer	\$44.79	to	\$47.79	55.00%
PL/SQL Developer	\$44.79	to	\$47.79	55.00%
Project Manager	\$56.79	to	\$61.79	55.00%
Quality Assurance Analyst	\$42.79	to	\$47.79	55.00%
Technical Writer	\$28.79	to	\$33.09	55.00%
Network Administrator	\$40.79	to	\$44.79	55.00%
Help Desk Technician	\$30.79	to	\$33.79	55.00%
Telecom System Coordinator	\$27.79	to	\$32.79	55.00%
Telecom System Specialist	\$37.79	to	\$44.79	55.00%
Unix System Administrator	\$37.79	to	\$42.79	55.00%
Senior Developer	\$42.79	to	\$47.78	55.00%

**EXHIBIT B**

**SPECIAL TERMS OF CONSULTANT**



## SPECIAL TERMS OF CONSULTANT

City agrees to the following Special Terms of Consultant:

### TEMPORARY AND TEMPORARY-TO-HIRE SERVICES

1. Employees or associates of Consultant or any of its subcontractors temporarily assigned to City shall be referred to in the singular as "**Temporary Employee**" and in the plural as "**Temporary Employees.**" Temporary Employees are subject at all times to City's direct and indirect supervision; Consultant does not supervise such employees on their assignments. City further agrees that while on assignment with City, Temporary Employees shall not be permitted, without express advance written approval by an officer of Consultant, to i) engage in travel or otherwise operate a motor vehicle or any non-office machinery or equipment on behalf of City, ii) handle cash or valuables or negotiable instruments (City shall also not pay Temporary Employees directly or advance any funds to them.), iii) be permitted unsupervised or uncontrolled access to confidential or proprietary information, including confidential access codes, iv) be permitted unsupervised access to or control of City's business premises, v) remove any property of City from City's business premises, vi) purchase, consume or distribute any alcohol, or vii) consume drugs, unless advance written authorization is provided by a physician. Should any Temporary Employee be permitted to engage in any of the activities described in i) - vii) above, Consultant shall have no responsibility arising therefrom, and City agrees to indemnify, defend and hold harmless Consultant for any and all liabilities, losses, claims, injuries, suits, judgments, expenses, charges, fines, interest or penalties (collectively, "**Losses**") resulting from the employee's conduct.
2. Background check services are available for an additional fee to City and must be agreed to in writing between Consultant and City. Background check services may be conducted by one or more of Consultant's preferred, third-party vendors (e.g., A-Check Global). City shall indemnify, defend and hold harmless Consultant for any and all Losses arising from or related to i) the background checks or the performance thereof and ii) Consultant's assignment of any Temporary Employees to City, at City's request, before the full completion of City- or Consultant-required background checks, including any legal requirements associated therewith.
3. City agrees to immediately contact its Consultant representative or the Consultant Human Resources Hotline at (800) 270-9120 upon receipt of any complaint by a Temporary Employee regarding, but not limited to, any of the following: sexual harassment, discrimination, retaliation, bullying, wage and hour issues, meal and rest breaks or any other employment-related concern. Further, City agrees to comply with the Americans with Disabilities Act and any local health accommodation requirements, and upon request by Consultant, agrees to participate in an interactive process with Consultant and any Temporary Employee who seeks a reasonable workplace accommodation.
4. City agrees to indemnify, defend and hold harmless Consultant and its subsidiaries and related entities, and all of their respective officers, directors, shareholders, employees, agents and representatives (collectively, "**Consultant Parties**") for Losses arising out of any violation of laws by City. In addition, City agrees to comply with all laws, regulations and ordinances relating to work site health and safety, and agrees to provide Temporary Employees a safe and healthful workplace. City agrees to indemnify, defend and hold harmless Consultant Parties for Losses arising out of City's violations of the Occupational Safety and Health Act of 1970, or any similar state law with respect to workplaces owned, leased or supervised by City, and/or to which Temporary Employees are assigned. For any serious injury, illness or death of a Temporary Employee occurring in a place of employment or in connection with an Consultant employee's assignment with City, City shall notify Consultant immediately (Notification to Consultant is also required in the event of any accident or medical treatment.) and is required to report immediately, by telephone or fax, to the nearest Occupational Safety and Health Administration ("**OSHA**") office. City is authorized and required by Consultant to make the report on behalf of both Consultant and City. City shall provide to OSHA all information required by applicable law, as well as Consultant's name, address, phone number and contact person, and the Temporary Employee's name. City shall notify Consultant immediately after the report has been made.

5. City shall reimburse Consultant for any expenses that are incurred by Consultant or Temporary Employees, which are reasonably related to, or arise out of, the services provided to City or the discharge of duties by Temporary Employees for City under this Agreement ("**Reimbursable Expenses**"). Such Reimbursable Expenses may include a reasonable amount for Temporary Employee internet service or mobile device service for remote work, City-required equipment and tools, City-required uniforms, pre-employment health screening (e.g., COVID-19 testing) and fit for duty doctor's visit costs. Expenses for travel shall not be invoiced or reimbursed unless such travel expenses have been previously authorized by City.

6. City, or federal, state or local laws, either currently existing or enacted in the future, may mandate that Temporary Employees undergo specific training (e.g., sexual harassment prevention training), presentations and other curricula ("**Trainings**"), where the payment of wages is required by law. Unless otherwise agreed to by the parties in writing, the parties agree that Consultant will invoice City for the time spent by Temporary Employee on such Trainings, as well as for voting, as allowed by applicable law, according to the regular markup percentage or bill rate that Consultant charges for such employee.

7. Federal, state or local laws, either currently existing or enacted in the future, may require Consultant or City to provide one or more Temporary Employees with certain paid sick, quarantine or COVID-19-related leave (Each such law is a "**Paid Leave Law**"). Consultant and City agree to comply with all provisions of each Paid Leave Law with respect to Temporary Employees as such laws become effective. Unless otherwise agreed to by the parties in a writing, to address the costs for compliance with a Paid Leave Law, the parties agree that Consultant will invoice City for the paid leave of a Temporary Employee according to the regular markup percentage or bill rate that Consultant charges for such employee provided that the criteria required for the payment of leave to such employee under applicable law has been met.

8. Unless otherwise agreed to by the parties elsewhere in the Agreement and/or in any of the Agreement's mutually agreed upon ancillary exhibit(s) or document(s), to the extent that Consultant may be required to pay the Temporary Employee overtime under any federal, state or local law, Consultant, as applicable, will bill City i) based upon the Temporary Employee's legally applicable hourly pay rate for overtime work plus the markup percentage for the Temporary Employee, or ii) an overtime bill rate, which will be calculated by applying a multiplier of 1.5 or 2.0 (for double time, where applicable) to the Temporary Employee's hourly bill rate.

9. Despite anything to the contrary in the Agreement, City shall defend, indemnify and hold harmless Consultant Parties from and against any and all Losses to the extent caused by City's failure to inform Consultant, in writing, that City or any job orders or services hereunder, are subject to Federal Acquisition Regulation and/or Defense Federal Acquisition Regulation Supplement, Service Contract Labor Standards, formerly known as the McNamara-O'Hara Service Contract Act of 1965 ("**SCLS/SCA**"), Davis-Bacon Act of 1931, Federal Paid Sick Leave (EO 13706), or any other federal law where a security clearance or any kind of government-issued credential or designation is required.

10. As City's staffing supplier, Consultant considers itself a critical vendor to City, and Consultant is committed to helping its clients through turbulent times. To ensure alignment on this issue, Consultant requests and City agrees that, in the unlikely event of a City bankruptcy filing, that Consultant will be a critical vendor of City so that all services performed by Consultant under this Agreement, or any other agreement between the parties, before and after any bankruptcy filing, are paid in accordance with the parties' applicable contractual terms.

**EXHIBIT C**

**CITY COUNCIL POLICY 100-5**

## CITY OF COSTA MESA, CALIFORNIA

### COUNCIL POLICY

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

#### BACKGROUND

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

#### PURPOSE

It is the purpose of this Policy to:

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

#### POLICY

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

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

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

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

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

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