

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
ADCOMM ENGINEERING LLC**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 1st day of March, 2023 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and ADCOMM ENGINEERING LLC, an Oregon limited liability company registered to do business in California ("Consultant").

RECITALS

A. City proposes to utilize the services of Consultant as an independent contractor to provide radio frequency consulting, as more fully described herein; and

B. 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. 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

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

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in City's Request for Proposals, attached hereto as Exhibit "A," and Consultant's Proposal, attached hereto as Exhibit "B," both incorporated herein.

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. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

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

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

1.4. 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, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

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

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

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

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "B." Consultant's total annual compensation shall not exceed Fifty Thousand Dollars (\$50,000.00).

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 Manager or designee, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

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

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

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, pandemics (excluding COVID-19), material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party (each, a "Force Majeure Event"). If a party experiences a Force Majeure Event, the party shall, within five (5) days of the occurrence of the Force Majeure Event, give written notice to the other party stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect. Any suspension of performance shall be of no greater scope and of no longer duration than is reasonably required and the party experiencing the Force Majeure Event shall use best efforts without being obligated to incur any material expenditure to remedy its inability to perform; provided, however, if the suspension of performance continues for sixty (60) days after the date of the occurrence and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure Event, the parties shall meet and discuss in good faith any amendments to this Agreement to permit the other party to exercise its rights under this Agreement. If the parties are not able to agree on such amendments within thirty (30) days and if suspension of performance continues, such other party may terminate this Agreement immediately by written notice to the party experiencing the Force Majeure Event, in which case neither party shall have any liability to the other except for those rights and liabilities that accrued prior to the date of termination.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for an initial period of four (4) months, through June 30, 2023 on which date this Agreement shall automatically renew for a period of two (2) years, ending on June 30, 2025, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by two (2) additional one (1) year periods upon mutual written agreement of both parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.
- (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 limit per accident 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:

ADCOMM Engineering Inc
PO Box 308
Woodinville, WA 98072-0308
Tel: (425) 487-1361

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5023

Attn: Susan E. Ronning

Attn: Silvia Kennerson

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. 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 negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in the performance 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 negligence, recklessness, or willful misconduct in 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. In no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

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

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

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

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

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

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

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

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

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

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

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

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

6.21. 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.

6.22. 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.

6.23. 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.

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

6.25. 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.

6.26. 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.

6.27. 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.

6.28. 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.]

[Faint signature]

[Faint signature]

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

CONSULTANT


Signature

Date: 2/22/2023

Susan E Ronning, P.E. Owner & Principal ADCOMM Engineering LLC
[Name and Title]

CITY OF COSTA MESA



Date: March 23, 2023

Carol Molina
Purchasing Officer

ATTEST:

Brenda Green 3/23/2023
Brenda Green
City Clerk



APPROVED AS TO FORM:


Kimberly Hall Barlow
City Attorney


Date: 3/21/23

APPROVED AS TO INSURANCE:


Ruth Wang
Risk Management

Date: 3/16/23

APPROVED AS TO CONTENT:



Silvia Kennerson
Project Manager

Date: 03/16/23

DEPARTMENTAL APPROVAL:



Jennifer Le
Development Services Director

Date: 3/16/23

EXHIBIT A
REQUEST FOR PROPOSALS

Scope of Work for RF Consultant

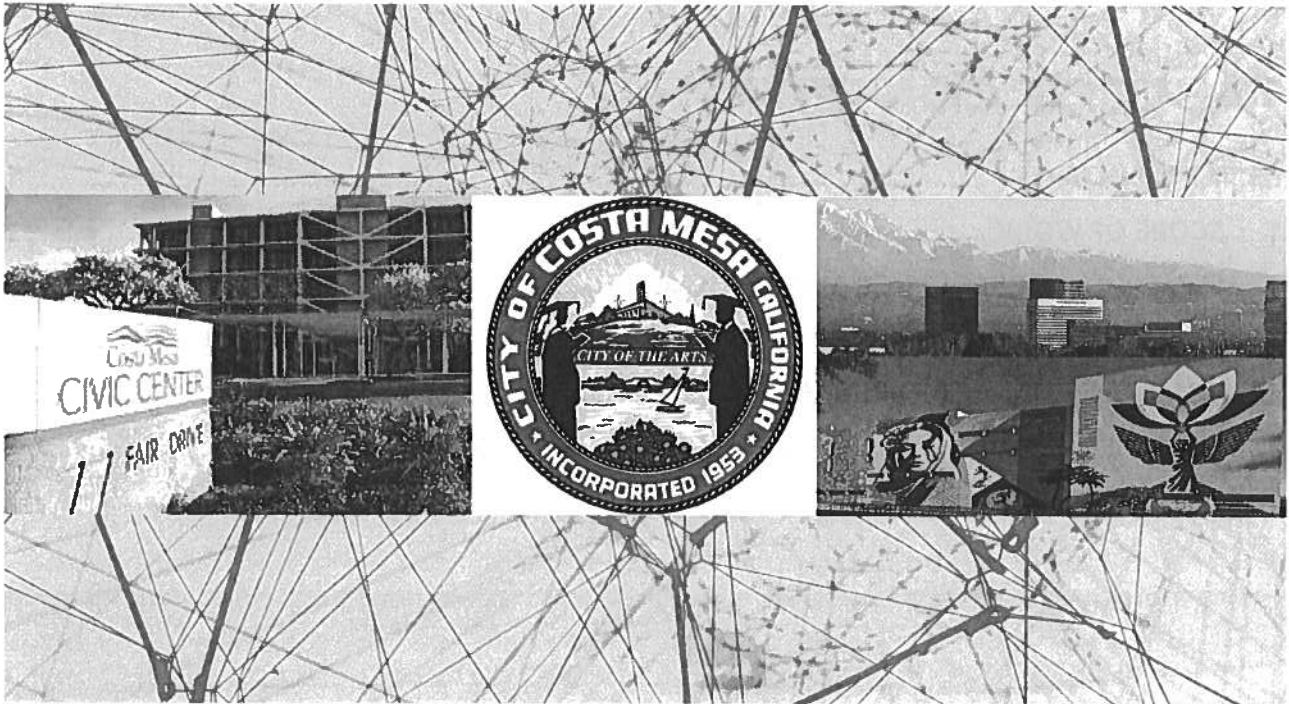
The City of Costa Mesa seeks qualified consultants to provide recurring on-call professional services associated with reviewing Radio Frequency (RF) Exposure Compliance Reports for planned compliance with all Federal Communications Commission (FCC) standards and requirements, including compliance with RF exposure requirements. The consultant or their appointee shall be a California-licensed or California-registered electrical engineer with demonstrated expertise in RF calculations and reporting. For reference in preparing a proposal, links to pertinent application forms, design standards, and the applicable Costa Mesa Code are provided below:

- Costa Mesa Municipal Code Article 2. (Antennas)
- Costa Mesa Municipal Code Section 19-15. (Wireless telecommunications services provided by telephone corporations in the public rights-of-way.)
- Wireless Telecommunications Facilities: Supplemental Application

The City may select one or more consultants to provide the below-described on-call service:

- Review of Applicant-provided pre- and post-installation RF emissions report of macro and small cell facilities to certify the proposed wireless facility, both individually and cumulatively with all other emitters that contribute more than five (5) percent to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits.
- Must have adequate staff of sufficient qualifications to process City wireless applications **within 7 calendar days** and the time frame required by local, state, and federal law.
 - Must either have on staff or readily accessible a licensed electrical engineer with the minimum degree(s) and certifications to completely and accurately review RF emissions reports for compliance with local, state, and federal requirements
 - Additional time requests must be made in writing by the consultant to the project manager.
- Consultant's fee schedule
 - **One-time flat fee** that applies to the review of the RF emissions reports, inclusive of the initial review and any subsequent reviews (paid by the developer).

EXHIBIT B
CONSULTANT'S PROPOSAL



REQUEST FOR QUALIFICATIONS

Radio Frequency Consultant

PREPARED FOR:

City of Costa Mesa, California

DATE SUBMITTED

1/19/2023



ADCOMM Engineering LLC

Bridging The Gap Between Operations & Technology®

P.O. Box 308
Woodinville, WA 98072-0308
Phone: 425-487-1361
adcomm911.com

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ADCOMM Engineering LLC

Bridging The Gap Between Operations & Technology®

January 13, 2023

City of Costa Mesa, Development Services Department
Attn: Mr. Patrick Achis, Assistant Planner
77 Fair Drive
Costa Mesa, CA 92626
PATRICK.ACHIS@costamesaca.gov

RE: Radio Frequency Consultant

Dear Mr. Achis:

Thank you for giving ADCOMM Engineering LLC the opportunity to provide our response to the City of Costa Mesa's request for an on-call Radio Frequency Consultant. As a leading critical communications consulting firm with a unique footprint and extensive client network, we believe the County will find ADCOMM well qualified to provide reviews of RF emissions reports to determine compliance with FCC standards and City Code.

The City of Costa Mesa will find ADCOMM's references are excellent; many customers have been supported by ADCOMM for decades. We believe this is our best indication of customer satisfaction.

I appreciate your taking the time to review our qualifications. If you have any questions or need more information, please feel free to contact me directly at 971 718-7574 or s.ronning@adcomm911.com.

Sincerely,

ADCOMM Engineering LLC



Susan E. Ronning, P.E., PMP, ASEP

Owner & Principal Engineer

Authorized to enter into contractual obligations

1. SCOPE OF WORK

The City of Costa Mesa requests the following work effort:

Review applicant-provided pre- and post-installation RF emissions report¹ of macro and small cell facilities to certify the proposed wireless facility, both individually and cumulatively with all other emitters that contribute more than five (5) percent to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits.

ADCOMM requests the following to support the desired scope of work:

Costa Mesa should supply an ADCOMM developed or reviewed Applicant Data Sheet (ADS) to prospective applicants and submit to a required (remote) interview to ensure proper and sufficient information is supplied to support review and assessment.

¹ Section 19-15(b)(2)(g). RF compliance report.

The RF report must be prepared and certified by a California-licensed or California-registered electrical engineer with demonstrated expertise in RF calculations and reporting. The RF report must include the actual frequency and power levels (in watts, effective radiated power) from all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. If the applicant submits a batched application, a separate site-specific RF report shall be prepared for each facility associated with the batch. Every RF report must be originally signed and originally sealed by the person responsible for the contents of the report certifying the accuracy of the data contained therein. The RF report must include the engineer's name, license number, and license expiration date.

2. SUMMARY OF PROFESSIONAL EXPERIENCE

ADCOMM's reputation for delivering thorough, reliable, and buildable designs is well known and earned by our more than 700 successfully completed projects in the past 44 years. Our reputation for effective and cost-conscious finished products is also well-earned: ADCOMM consistently provides our clients with compliancy, implementation, and support services to local, regional, and state agencies, private and public communications services, and systems. A sample of relative projects is listed below with more available upon request.

Clifton Ridge RF Study, Shelton, Washington. Mason County Emergency Communications (MACECOM) proposed new antennas at Mason County PUD's Clifton Ridge communications site. Mason PUD 3 enlisted ADCOMM to assess and document the work area to determine if and where RF hazard(s) of a submitted radio transmitter may exceed the non-ionizing electromagnetic radiation (NIER) maximum permissible exposure (MPE) limits, as set forth by the Federal Communications Commission (FCC) in FCC 47 CFR § 1.1310 "Radiofrequency Radiation Exposure Limits". ADCOMM performed on site measurements to capture existing site data and calculated impacts from the new proposed equipment.

Emergency Radio Upgrades Intermodulation Study, Richland, Washington. Hanford Mission Integration Solutions LLC (HMIS) requested a comprehensive intermodulation study of the Combined Community Communication Facility (CCCF) on Rattlesnake Mountain on 12 new transmit-receive pairs proposed for placement at the facility to determine the potential for interference with existing radio systems. One potentially harmful third-order intermodulation product was identified and three mitigation solutions were recommended.

NIER RF Emissions Study, Rickreall, Oregon. Polk County Emergency Management planned to construct a new tower at the Polk County Fairgrounds site. The tower construction required a radio frequency (RF) exposure study done to meet the county requirements for RF exposure. Polk County Emergency Management enlisted ADCOMM to determine if and where RF hazard(s) of submitted radio transmitters may exceed the non-ionizing electromagnetic radiation (NIER) maximum permissible exposure (MPE) limits, as set forth by the Federal Communications Commission (FCC) in FCC 47 CFR § 1.1310 "Radiofrequency Radiation Exposure Limits". ADCOMM calculated impacts from the new proposed tower and associated equipment.

Picabo Hills RF Interference Troubleshooting, Boise, Idaho. Idaho Power was experiencing severe interference to their 220 MHz trunked radio system from two high power, 100 kW, FM broadcast stations on the same site. ADCOMM worked with Idaho Power remotely to provide input regarding testing procedures for Idaho Power crews to locate the sources of interference. Idaho Power then requested ADCOMM personnel on site to support the Idaho Power staff. ADCOMM staff spent several days working with Idaho Power staff to locate the source of the interference and to develop a solution for the site. This work was completed, and a formal recommendation was made by ADCOMM.

Non-Ionizing Electromagnetic Radiation (NIER) Analysis and Measurements, Verizon Wireless and Other Wireless Carriers in Washington. ADCOMM has performed over 50 NIER studies for Verizon Wireless and other wireless carriers, including documenting the sites, performing NIER calculations to determine predicted levels, and measuring the levels where appropriate.

Simulcast System Testing and Data Analysis, Kings County, California. Kings County implemented a new VHF and UHF Motorola radio system using simulcast technology. The system experienced several audio quality issues including audio distortion and static over much of the service area. ADCOMM was selected to provide simulcast technical expertise to the Kings County technical staff and to provide on-site system testing and troubleshooting services. This work included extensive engineering and field work. ADCOMM determined several design and maintenance related issues and made specific recommendations for system improvement and changes. The recommended system changes were implemented, which resulted in audio quality improvements.

VHF Part 22 FCC License Viability Analysis, Okanogan, Washington. ADCOMM performed a technical feasibility analysis of FCC Part 22 VHF licenses potentially available to Okanogan County to augment its existing public safety VHF frequencies. The analysis included a high-level review of the regulatory status of the licenses, their viability and potential usability, and United States and Canadian interference and frequency coordination considerations.

Various Radio, Dispatch and Microwave Projects, King County, Washington. ADCOMM has worked with King County on a variety of projects for over 25 years. These projects include evaluating their UHF communications system, providing technical assistance with the vendor negotiations and engineering of their county-wide 800 MHz trunked radio system, providing engineering and implementation assistance in the development of six radio communications sites, providing technical assistance with FCC licensing, providing technical assistance with microwave path engineering, providing T1 network design, providing technical assistance with dispatch center workload analysis, providing non-ionizing electromagnetic radiation (NIER) calculations and measurements, providing assistance with interference analysis, providing technical support with site management issues and co-location technical issues, providing assistance in dispatch center space, and providing technical support analysis. ADCOMM provided engineering and project management for the following radio sites implemented: McDonald Peak, Federal Way, View Park, Ring Hill, Squak Mountain upgrades, Skyway, Cambridge, and Crista.

3. STAFF QUALIFICATIONS

ADCOMM performs RF engineering design, implementation, and troubleshooting services as well as leads, manages, and consults on communications technology systems.

Systems include, but are not limited to, two-way radio for regional and campus-based services areas, fiber and microwave transport networks, IP routed networks, in-building and distributed antenna systems (BDA/DAS), dispatch consoles, alarm and management systems, vehicular repeater systems, 9-1-1 telephony networks, computer aided dispatch systems at public safety answering points (PSAPs), and other critical applications.

ADCOMM is comprised of highly skilled staff that maintain certifications in their specific areas of expertise.

Our Principal and Owner, Ms. Susan Ronning, P.E., PMP, ASEP, is certified as a Professional Engineer who is licensed in California, license No. 17546.

Ms. Ronning holds an Associate of Science in Electronics Technology, a Bachelor of Science in Electrical Engineering, and a Master of Business Administration. She is a PMI® certified Project Management Professional and certified Associate of Systems Engineering Professional. She has over 25 years' multi-faceted experience in the wireless telecommunications industry with a focus on critical voice and data communications networks in the public and private sector for public safety, emergency management, utility, and transportation industries.

ADCOMM is certified as a woman-, veteran-, and minority-owned small business headquartered in Sandy, Oregon.

4. COMPANY CONTACT INFORMATION

Firm Name: ADCOMM Engineering LLC

Contact Name: Ms. Susan E. Ronning, P.E., PMP, ASEP

Contact Title: Owner and Principal Engineer

Mailing Address: P.O. Box 308, Woodinville, WA 98072-0308

Physical Address: 18809 Autumn Way, Sandy, OR 97055

Contact Phone: 971-718-7574

Firm Phone: 425-487-1361

Email: s.ronning@adcomm911.com

Billing: accounting@adcomm911.com

Website: www.adcomm911.com

California Professional Engineer License Number: 17546 (Susan E. Ronning, P.E., PMP, ASEP)

5. FEE SCHEDULE

Per the City's request, each application review project fee is fixed; it will be invoiced no more than once per month. The fixed fee applies to individual application submissions of RF emissions reports, and per the City's RFQ will cover the initial review. Any subsequent reviews shall be paid by the developer.

The fixed fee per application review is \$1,900.

- This fee assumes no on-site travel is required and applicants supply information using an application form (or checklist) reviewed and approved by ADCOMM Engineering LLC.

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
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- 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.