

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
DAVIS FARR LLP**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 1st day of December, 2018 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and DAVIS FARR LLP, a California limited liability company ("Consultant").

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide transient occupancy tax auditing services, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

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

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

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the Scope of Services, attached hereto as Exhibit "A" and incorporated herein by this reference. Consultant shall perform the services in accordance with the audit schedule set forth in Exhibit "B," attached hereto and incorporated herein by this reference, unless City and Consultant agree in writing to modify such schedule.

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; 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 annual compensation shall not exceed Seventeen Thousand Four Hundred Sixty Dollars (\$17,460.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

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

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times 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, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

## **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of five (5) years, ending on November 30, 2023, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant.



The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

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

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

## **5.0. INSURANCE**

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

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.



- (d) Professional errors and omissions (“E&O”) liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects’ and engineers’ coverage shall be endorsed to include contractual liability. If the policy is written as a “claims made” policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: “The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant.”
- (b) Notice: “Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.”
- (c) Other insurance: “The Consultant’s insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit “C” and incorporated herein by this reference.

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

## 6.0. GENERAL PROVISIONS

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

6.2. Representatives. The City 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:

Davis Farr LLP  
2301 Dupont Dr. Ste. 200  
Irvine, CA 92612  
Tel: (949) 474-2020  
Attn: Jennifer Farr

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5243  
Attn: Kelly Telford



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 "D" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

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

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

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

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful



misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its 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. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

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

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

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

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

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

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

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

[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

Jennifer Farr  
Signature

Date: 11/29/18

Jennifer Farr, Partner  
[Name and Title]

[REDACTED]  
Social Security or Taxpayer ID Number

CITY OF COSTA MESA

Tamara Letourneau

Date: 12/10/18

Tamara Letourneau  
Acting City Manager

ATTEST:

Brenda Green 12/10/18  
Brenda Green  
City Clerk



APPROVED AS TO FORM:

Thomas Duarte  
Thomas Duarte  
City Attorney


Date: 12/10/18

APPROVED AS TO INSURANCE:

Ruth Wang  
Ruth Wang  
Risk Management

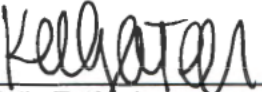
Date: 12/3/18

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Jennifer King  
Project Manager


Date: 12/5/2018

DEPARTMENTAL APPROVAL:

  
\_\_\_\_\_  
Kelly Telford  
Finance Director

Date: 12/5/18

APPROVED AS TO PURCHASING:

  
\_\_\_\_\_  
Kelly Telford  
Finance Director

Date: 12/5/18

**EXHIBIT A**  
**SCOPE OF SERVICES**



**DAVIS FARR**  
**SCOPE OF SERVICES**

The City currently has 30 hotels and transient occupancy taxes ("TOT"). The City wishes to engage external auditors to audit 6 to 11 hotels per year on a rotating basis.

- Each audit will cover a three-year lookback period ending June 30, 2018, 2019, 2020, 2021, or 2022 as determined by the City.
- The objectives when completing Transient Occupancy Tax audits include the following:
  - Detecting and reporting noncompliance with the Code
  - Calculating amounts due to the City, including penalties and interest
  - Clearly explaining the findings to the hotel management and obtaining their acknowledgement of the findings
  - Providing support to the City if findings are questioned after the reports are issued
  - Providing feedback to the City on ways to improve ongoing compliance with the Code
  - Ensuring our audit documentation conforms to the attestation standards established by the American Institute of Certified Public Accountants

The procedures for each hotel as agreed upon by the management of the City of Costa Mesa will be as follows:

1. Review the City's Code for Transient Occupancy Taxes and Business Improvement Area Assessment
2. Provide the City with a form letter to notify the hotel of the upcoming audit.
3. Call hotel to schedule the audit.
4. Send the Hotel an audit request list at least a week prior to the audit start date.
5. Review the results of prior audits for the Hotel to determine if there are areas that require follow up.
6. Discuss any specific concerns the City has with the Hotel.
7. Provide the audit schedule to the City
8. Obtain all reports provided by the hotel owner to the City for the period under audit.

9. Interview the appropriate individuals responsible for recording revenues reported to the City. Document a walkthrough a typical transaction from billing to collection to recording to deposit, if any. Gain an understanding of the specific system reports used to generate reporting to the City and determine what adjustments are made to any system reports or files. Determine how gross rents and uncollected rents are accounted for in the system. Inquire about complementary rooms and barter transactions.
10. Determine if reports were submitted to the City on time or penalties were properly calculated if TOT returns were late.
11. Calculate the mathematical accuracy of the amount due to the City based on the applicable tax rate.
12. Trace information from the reports provided to the City to hotel reports and accounting records supporting the amounts reported.
13. Review the Hotel's reports and financial statements to identify revenues that are not included as taxable for calculation of the tax. Evaluate the reasonableness of the exclusion.
14. Select a sample of monthly revenues reported to the City and trace revenues to detailed reports by customer (daily reports). From these detailed reports, we will select a sample of customer folio's to verify that all amounts collected from the customers are reflected in the system reports.
15. Evaluate the hotel owner's adherence to charging Transient Occupancy Taxes through review of folios.
16. For any exemptions noted, review a sample of exemptions and trace to evidence that it allowable (e.g. government employee, stay longer than 30 days, etc.). For government employees, this will include obtaining a copy of the government exemption documentation.
17. Obtain information about complementary rooms including whether or not tax was paid on complementary rooms. Include information about the number of complementary rooms given in our report.
18. Conduct an exit meeting with the hotel management summarizing our findings to ensure we answer any questions they have about our findings. Ask the hotel management to sign an exit meeting summary of the findings.
19. Issue an agreed-upon-procedures report in accordance with the standards established by the American Institute of Certified Public Accountants. The report will identify the agreed upon procedures performed, results reached and recommendations. The report will include a schedule of revenue reported, taxes paid and exemptions reported to the City, audited amounts, and amounts due to the City along with penalties, if applicable.

**EXHIBIT B**  
**AUDIT AND FEE SCHEDULE**



<b>Proposed audit schedule:</b>			
<b>2018-19</b> for audit years from 7/1/2015 to 6/30/2018	Wyndham	2,700.00	
	Crowne Plaza	2,700.00	
	Best Western	2,700.00	
	Motel 6 #1347	2,700.00	
	Sandpiper	2,700.00	
	Regency	2,700.00	\$ 16,200
<b>2019-20</b> for audit years from 7/1/2016 to 6/30/2019	Westin	2,770.00	
	Ayres	2,770.00	
	Travelodge OC	2,770.00	
	Super 8	2,770.00	
	BLVD	2,770.00	
	Tahiti	2,770.00	\$ 16,620
<b>2020-21</b> for audit years from 7/1/2017 to 6/30/2020	Hilton	2,840.00	
	Marriott	2,840.00	
	Ramada	2,840.00	
	Motel 6 NB	2,840.00	
	Tern Inn	2,840.00	
	Ali Baba	2,840.00	\$ 17,040
<b>2021-2022</b> for audit years from 7/1/2018 to 6/30/2021	Holiday Inn	2,910.00	
	Travelodge Hacienda	2,910.00	
	Vagabond	2,910.00	
	Ana Mesa	2,910.00	
	New Harbor	2,910.00	
	Harbor Bay	2,910.00	\$ 17,460
<b>2022-2023</b> for audit years from 7/1/2019 to 6/30/2022	Residence	2,980.00	
	La Quinta	2,980.00	
	Days Inn	2,980.00	
	Cozy Inn	2,980.00	
	Star Inn	2,980.00	\$ 14,900

**EXHIBIT C**  
**CERTIFICATES OF INSURANCE**



DAVIFAR-01

AJ922628

**CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
05/21/2018

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

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

PRODUCER License # 0E77964 Integro USA Inc., dba: Integro Insurance Brokers 3620 Birch Street Newport Beach, CA 92660	CONTACT NAME: Suzanne Posada PHONE (A/C, No, Ext): (949) 419-1644 FAX (A/C, No): (949) 419-1674 E-MAIL ADDRESS: suzanne.posada@integrogrou.com
	INSURER(S) AFFORDING COVERAGE INSURER A: Travelers Property Casualty Company of America INSURER B: Travelers Casualty Insurance Company of America INSURER C: Great Divide Insurance Company INSURER D: INSURER E: INSURER F:
INSURED  Davis Farr, LLP 2301 Dupont Drive, Suite #200 Irvine, CA 92612	

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:			
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	6804J154861	05/21/2018	05/21/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	BA4J155058	05/21/2018	05/21/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	CUP4J155126	05/21/2018	05/21/2019	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	UB6K048648	05/21/2018	05/21/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liab. -	CAB20185202	05/21/2018	05/21/2019	Ea Claim/Aggregate \$ 5,000,000
C	(Claims Made)	CAB20185202	05/21/2018	05/21/2019	Ded.- Ea Claim/Agg. \$ 50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Professional Liability (Claims Made) Policy: Retroactive Date: 05/15/2015

Certificate Holder is additional insured, per the attached form #CG D1 86 11 03, to the extent required by written contract, subject to policy terms and conditions.

## CERTIFICATE HOLDER

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

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Cynthia A. Retter*



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the **PROVISIONS** of this endorsement carefully to determine rights, duties, and what is and is not covered.

- A. Broadened Named Insured
- B. Damage To Premises Rented To You Extension
  - Perils of fire, explosion, lightning, smoke, water
  - Limit increased to \$300,000
- C. Blanket Waiver of Subrogation
- D. Blanket Additional Insured– Managers or Lessors of Premises
- E. Blanket Additional Insured – Lessor of leased Equipment
- F. Incidental Medical Malpractice
- G. Personal Injury – Assumed by Contract
- H. Extension of Coverage – Bodily Injury
- I. Injury to Co-Employees and Co-Volunteer Workers
- J. Aircraft Chartered with Crew
- K. Non-Owned Watercraft – Increased from 25 feet to 50 feet
- L. Increased Supplementary Payments
  - Cost for bail bonds increased to \$2,500
  - Loss of earnings increased to \$500 per day
- M. Knowledge and Notice of Occurrence or Offense
- N. Unintentional Omission
- O. Reasonable Force – Bodily Injury or Property Damage

### PROVISIONS

#### A. BROADENED NAMED INSURED

1. The Named Insured in Item 1. of the Declarations is as follows:  
The person or organization named in Item 1. of the Declarations and any organization, other than a partnership or joint venture, over which you maintain ownership or majority interest on the effective date of the policy. However, coverage for any such organization will cease as of the date during the policy period that you no longer maintain ownership of, or majority interest in, such organization.
2. WHO IS AN INSURED (Section II) Item 4.a. is deleted and replaced by the following:
  - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, unless reported in writing to us within 180 days.
3. This Provision A. does not apply to any person or organization for which coverage is excluded by endorsement.

#### B. DAMAGE TO PREMISES RENTED TO YOU EXTENSION

1. The last paragraph of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages) is deleted and replaced by the following:  
Exclusions c. through n. do not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:
  - a. Fire;
  - b. Explosion;
  - c. Lightning;
  - d. Smoke resulting from such fire, explosion, or lightning; or
  - e. Water.A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE (Section III).
2. This insurance does not apply to damage to premises while rented to you, or temporarily



## COMMERCIAL GENERAL LIABILITY

occupied by you with permission of the owner, caused by:

- a. Rupture, bursting, or operation of pressure relief devices;
  - b. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water;
  - c. Explosion of steam boilers, steam pipes, steam engines, or steam turbines.
3. Part 6. of LIMITS OF INSURANCE (Section III) is deleted and replaced by the following:
- Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under COVERAGE A. for damages because of "property damage" to any one premises while rented to you, or temporarily occupied by you with permission of the owner, caused by fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning, or water. The Damage To Premises Rented To You Limit will apply to all damage proximately caused by the same "occurrence", whether such damage results from fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning, or water, or any combination of any of these.
- The Damage To Premises Rented To You Limit will be the higher of:
- a. \$300,000; or
  - b. The amount shown on the Declarations for Damage To Premises Rented To You Limit.
4. Under DEFINITIONS (Section V), Paragraph a. of the definition of "insured contract" is amended so that it does not include that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:
- a. Fire;
  - b. Explosion;
  - c. Lightning;
  - d. Smoke resulting from such fire, explosion, or lightning; or
  - e. Water.
5. This Provision B. does not apply if coverage for Damage To Premises Rented To You of

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) is excluded by endorsement.

### C. BLANKET WAIVER OF SUBROGATION

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of premises owned or occupied by or rented or loaned to you; ongoing operations performed by you or on your behalf, done under a contract with that person or organization; "your work"; or "your products". We waive this right where you have agreed to do so as part of a written contract, executed by you prior to loss.

### D. BLANKET ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (referred to below as "additional insured") with whom you have agreed in a written contract, executed prior to loss, to name as an additional insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you, subject to the following provisions:

1. Limits of Insurance. The limits of insurance afforded to the additional insured shall be the limits which you agreed to provide, or the limits shown on the Declarations, whichever is less.
2. The insurance afforded to the additional insured does not apply to:
  - a. Any "occurrence" that takes place after you cease to be a tenant in that premises;
  - b. Any premises for which coverage is excluded by endorsement; or
  - c. Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
3. The insurance afforded to the additional insured is excess over any valid and collectible insurance available to such additional insured, unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

### E. BLANKET ADDITIONAL INSURED - LESSOR OF LEASED EQUIPMENT

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (referred to below as "additional insured") with

COMMERCIAL GENERAL LIABILITY

whom you have agreed in a written contract, executed prior to loss, to name as an additional insured, but only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such additional insured, subject to the following provisions:

- 1. Limits of Insurance. The limits of insurance afforded to the additional insured shall be the limits which you agreed to provide, or the limits shown on the Declarations, whichever is less.
- 2. The insurance afforded to the additional insured does not apply to:
  - a. Any "occurrence" that takes place after the equipment lease expires; or
  - b. "Bodily injury" or "property damage" arising out of the sole negligence of such additional Insured.
- 3. The insurance afforded to the additional insured is excess over any valid and collectible insurance available to such additional insured, unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

**F. INCIDENTAL MEDICAL MALPRACTICE**

- 1. The definition of "bodily injury" in DEFINITIONS (Section V) is amended to include "Incidental Medical Malpractice Injury".
- 2. The following definition is added to DEFINITIONS (Section V):
 

"Incidental medical malpractice injury" means bodily injury, mental anguish, sickness or disease sustained by a person, including death resulting from any of these at any time, arising out of the rendering of, or failure to render, the following services:

  - a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages;
  - b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances; or
  - c. First aid.
  - d. "Good Samaritan services". As used in this Provision F., "Good Samaritan services" are those medical services rendered or provided in an emergency and

for which no remuneration is demanded or received.

- 3. Paragraph 2.a.(1)(d) of WHO IS AN INSURED (Section II) does not apply to any registered nurse, licensed practical nurse, emergency medical technician or paramedic employed by you, but only while performing the services described in paragraph 2. above and while acting within the scope of their employment by you. Any "employees" rendering "Good Samaritan services" will be deemed to be acting within the scope of their employment by you.
- 4. The following exclusion is added to paragraph 2. Exclusions of COVERAGE A. – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):
 

(This insurance does not apply to:) Liability arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals by or with the knowledge or consent of the insured.
- 5. For the purposes of determining the applicable limits of insurance, any act or omission, together with all related acts or omissions in the furnishing of the services described in paragraph 2. above to any one person, will be considered one "occurrence".
- 6. This Provision F. does not apply if you are in the business or occupation of providing any of the services described in paragraph 2. above.
- 7. The insurance provided by this Provision F. shall be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this policy.

**G. PERSONAL INJURY – ASSUMED BY CONTRACT**

- 1. The Contractual Liability Exclusion in Part 2., Exclusions of COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY (Section I – Coverages) is deleted and replaced by the following:
 

(This insurance does not apply to:)

**Contractual Liability**

"Advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for



## COMMERCIAL GENERAL LIABILITY

damages that the insured would have in the absence of the contract of agreement.

2. Subparagraph f. of the definition of "insured contract" (DEFINITIONS – Section V) is deleted and replaced by the following:

- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury," "property damage" or "personal injury" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

3. This Provision G. does not apply if COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY is excluded by endorsement.

### H. EXTENSION OF COVERAGE – BODILY INJURY

The definition of "bodily injury" (DEFINITIONS – Section V) is deleted and replaced by the following:

"Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

### I. INJURY TO CO-EMPLOYEES AND CO-VOLUNTEER WORKERS

1. Your "employees" are insureds with respect to "bodily injury" to a co-"employee" in the course of the co-"employee's" employment by you, or to your "volunteer workers" while performing duties related to the conduct of your business, provided that this coverage for your "employees" does not apply to acts outside the scope of their employment by you or while performing duties unrelated to the conduct of your business.
2. Your "volunteer workers" are insureds with respect to "bodily injury" to a co-"volunteer worker" while performing duties related to the conduct of your business, or to your "employees" in the course of the "employee's" employment by you, provided that this coverage for your "volunteer workers" does not apply while performing duties unrelated to the conduct of your business.

3. Subparagraphs 2.a.(1)(a), (b) and (c) and 3.a. of WHO IS AN INSURED (Section II) do not apply to "bodily injury" for which insurance is provided by paragraph 1. or 2. above.

### J. AIRCRAFT CHARTERED WITH CREW

1. The following is added to the exceptions contained in the Aircraft, Auto Or Watercraft Exclusion in Part 2., Exclusions of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):  
(This exclusion does not apply to:) Aircraft chartered with crew to any insured.
2. This Provision J. does not apply if the chartered aircraft is owned by any insured.
3. The insurance provided by this Provision J. shall be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this policy.

### K. NON-OWNED WATERCRAFT

1. The exception contained in Subparagraph (2) of the Aircraft, Auto Or Watercraft Exclusion in Part 2., Exclusions of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages) is deleted and replaced by the following:  
(2) A watercraft you do not own that is:
  - (a) Fifty feet long or less; and
  - (b) Not being used to carry persons or property for a charge;
2. This Provision K. applies to any person who, with your expressed or implied consent, either uses or is responsible for the use of a watercraft.
3. The insurance provided by this Provision K. shall be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this policy.

### L. INCREASED SUPPLEMENTARY PAYMENTS

Parts b. and d. of SUPPLEMENTARY PAYMENTS – COVERAGES A AND B (Section I – Coverages) are amended as follows:

1. In Part b. the amount we will pay for the cost of bail bonds is increased to \$2500.

2. In Part **d.** the amount we will pay for loss of earnings is increased to \$500 a day.

**M. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

1. The following is added to COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), paragraph 2. (Duties In The Event of Occurrence, Offense, Claim or Suit):

Notice of an "occurrence" or of an offense which may result in a claim under this insurance shall be given as soon as practicable after knowledge of the "occurrence" or offense has been reported to any insured listed under Paragraph 1. of Section II – Who Is An Insured or an "employee" (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice.

Knowledge by other "employee(s)" of an "occurrence" or of an offense does not imply that you also have such knowledge.

2. Notice shall be deemed prompt if given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us as soon as practicable after any insured listed under Paragraph 1. of Section II – Who Is An Insured or an "employee" (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice discovers that the "occurrence", offense or claim may involve this policy.
3. However, this Provision M. does not apply as respects the specific number of days within

which you are required to notify us in writing of the abrupt commencement of a discharge, release or escape of "pollutants" which causes "bodily injury" or "property damage" which may otherwise be covered under this policy.

**N. UNINTENTIONAL OMISSION**

The following is added to COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), paragraph 6. (Representations):

The unintentional omission of, or unintentional error in, any information provided by you shall not prejudice your rights under this insurance. However, this Provision N. does not affect our right to collect additional premium or to exercise our right of cancellation or nonrenewal in accordance with applicable state insurance laws, codes or regulations.

**O. REASONABLE FORCE – BODILY INJURY OR PROPERTY DAMAGE**

The **Expected Or Intended Injury Exclusion** in Part 2., Exclusions of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages) is deleted and replaced by the following:

(This insurance does not apply to:)

**Expected or Intended Injury or Damage**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**EXHIBIT D**

**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.