

**AMENDMENT NUMBER TWO
TO PROFESSIONAL SERVICES AGREEMENT
WITH
ALBERT GROVER & ASSOCIATES, INC.**

This Amendment Number Two ("Amendment") is made and entered into this 3rd day of September, 2020 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and AGA ENGINEERS, INC., a California corporation ("Consultant").

WHEREAS, City and Albert Grover & Associates, Inc. entered into an agreement on January 3, 2018 for Albert Grover & Associates, Inc. to provide traffic and transportation engineering consulting services in connection with the Interstate 405 (I-405) Improvement Project (the "Agreement"); and

WHEREAS, on January 15, 2019, City and Albert Grover & Associates, Inc. amended the Agreement to increase Albert Grover & Associates, Inc.'s maximum compensation; and

WHEREAS, on June 18, 2020, Consultant notified City that Consultant had signed an Asset Purchase Agreement to acquire certain assets of Albert Grover & Associates, Inc., effective July 1, 2020, and that the purchase would include the assignment of all rights to the Agreement, subject to the City's approval of the assignment; and

WHEREAS, Consultant and Albert Grover & Associates, Inc. entered into an Assignment and Assumption of Contract dated July 1, 2020, wherein Albert Grover & Associates, Inc. assigned all of its right, title, and interest in, to and under the Agreement to Consultant and Consultant assumed all of Albert Grover & Associates, Inc.'s responsibilities, liabilities, covenants and obligations as set forth in the Agreement and agreed to perform and observe all of Albert Grover & Associates, Inc.'s covenants and obligations contained in the Agreement. The Assignment and Assumption of Contract is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, City consented to the assignment of the Agreement, and City and Consultant desire to amend the Agreement to reflect the assignment.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Any and all references in the Agreement to "Albert Grover & Associates, Inc." shall be amended to read, "AGA Engineers, Inc."
2. Section 6.4 of the Agreement shall be amended to set forth Consultant's contact information as follows:

IF TO CONSULTANT:

AGA Engineers, Inc.
211 Imperial Highway, Suite 208
Fullerton, CA 92835
Tel: (714) 992-4592
Attn: Chalap K. Sadam

3. All terms not defined herein shall have the same meaning and use as set forth in the Agreement.
4. All other terms, conditions, and provisions of the Agreement not in conflict with this Amendment shall remain in full force and effect.
5. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

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

CITY OF COSTA MESA

Acir. Amador H
 City Manager

Date: 10/9/20

CONSULTANT

Chalap K. Sadam
 Signature
 Chalap K. Sadam, President
 Name and Title

Date: September 11, 2020

ATTEST:

Brenda Green 10/12/2020
 City Clerk



APPROVED AS TO FORM:

Kimberly Nell Barber
 City Attorney

Date: 10/8/20

APPROVED AS TO INSURANCE:


Risk Management

Date: 9/28/20

APPROVED AS TO CONTENT:


Project Manager

Date: 10-6-2020

DEPARTMENTAL APPROVAL:


Public Services Director

Date: 10-6-2020

APPROVED AS TO PURCHASING:


Finance Director

Date: 9/23/20

EXHIBIT A
ASSIGNMENT AND ASSUMPTION OF CONTRACT

ASSIGNMENT AND ASSUMPTION OF CONTRACT

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT (the "Assignment") is entered into effective as of July 1, 2020, by AGA Engineers, Inc., a California corporation, ("Buyer"), and Albert Grover & Associates, Inc., a California corporation (the "Seller").

RECITALS

A. Seller is a Party to that certain agreement with City of Costa Mesa (City) with regard to the I-405 Improvement Project dated January 3, 2018, and any amendments thereto (collectively, the "Contract").

B. Buyer is party to that certain Asset Purchase Agreement dated June 5, 2020 (the "APA") by and between Buyer and Seller for the purchase of certain assets of Seller.

C. Seller desires to assign to Buyer and Buyer desires to acquire all of Seller's interest in and to the Contract, subject to the Owner's consent.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Assignment. Subject to the Owner's consent, this Assignment shall be effective as of the time of Closing (as defined in the APA) under the APA (the "Effective Time"). As of the Effective Time, Seller hereby grants, conveys, and assigns unto Buyer, all of Seller's right, title, and interest in, to and under the Contract, subject however, to the provisions of the Contract and this Assignment.

2. Assumption. Subject to Owner's consent, effective as of the Effective Time, Buyer hereby assumes all of Seller's responsibilities, liabilities, covenants and obligations set forth in the Contract, and agrees to perform and observe all of Seller's covenants and obligations contained in the Contract. Notwithstanding the foregoing, the parties hereto agree that Buyer does not assume (and Seller shall remain exclusively liable for) any liability or obligation of Seller that was incurred, arising under or in connection with the Contract prior to the Effective Time.

3. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, which representations and warranties shall survive the execution and delivery of this Assignment and the assignment of the Contract, as follows:

A. Contract. The Contract has not been modified or amended, is in full force and effect and contains the entire agreement between Seller and Owner.

B. Defaults. There are no defaults by Seller under the Contract, and there are no disputes between Seller and Owner concerning the Contract.

C. Assignment. Seller is in full possession of the Contract as a party thereto and has not previously sold, transferred, hypothecated, encumbered, assigned or subleased all or any portion of Seller's right, title or interest in and to the Contract.

D. Owner Consent Required. In accordance with Section 1.7 of the Contract, the consent of Owner is required. This effectiveness and enforceability of this Agreement is subject to the consent of the Owner.

4. Appointment. Seller hereby irrevocably appoints Buyer, its successors and assigns, as the attorney and agent of Seller, in Seller's name and stead, to enforce the provisions of the Contract to the extent said rights are assigned herein. Seller hereby acknowledges that such power of attorney is coupled with an interest and may not be revoked in any manner or for any reason.

5. Binding Effect. This Assignment shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns.

6. Choice of Law. This Assignment shall be governed by and construed under the laws of the State of California, without regard to conflicts-of-laws principles that would require the application of any other law.

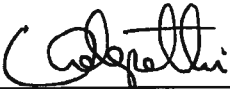
7. Attorneys' Fees. Should either party institute any legal action or proceeding to enforce the provisions of this Assignment, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with the exercise of its rights and remedies hereunder as well as court costs and expert witness fees as the court shall determine.

8. Execution of Assignment. This Agreement may be executed in any number of counterparts, using facsimile signatures, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[CONTINUED ON NEXT PAGE]

9. APA Terms Remain. No language, terms, provisions, rights, liabilities, obligations, assumptions or any other terms in this Assignment shall change, alter or amend any terms, provisions, rights, liabilities or obligations as between Seller and Buyer under the APA. If there is a conflict between language or any term, provision, right, liability, obligation or assumption in this Assignment and the APA, as between the Seller and Buyer, the language or the term, provision, right, liability, obligation or assumption in the APA shall take precedence and apply and control.

BUYER:
AGA ENGINEERS, INC.


By 
Chalap K. Sadam, President

SELLER:
ALBERT GROVER & ASSOCIATES, INC.

By 
Mark Miller, President

By its signature below, the City hereby consents to this Assignment between Seller and Buyer as noted above:

OWNER
CITY OF COSTA MESA

By: 
Name: RAJA SETHURAMAN
Title: PUBLIC SERVICES DIRECTOR