

**CITY OF COSTA MESA
AGREEMENT FOR MASSAGE SERVICES
WITH
SOOTHE, INC.**

THIS AGREEMENT FOR MASSAGE SERVICES ("Agreement") is entered into and effective this 20th day of September, 2022 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and SOOTHE, INC. a Delaware Corporation ("Contractor").

- A. City desires to engage Contractor to provide massage services to City employees; and
- B. Contractor represents that it has the degree of specialized expertise necessary and holds all necessary licenses to perform the massage services; and
- C. City and Contractor desire to contract for the services set forth herein and desire to set forth their rights, duties, and liabilities in connection with the services to be performed.

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

1. **Scope of Services.** Unless otherwise agreed to by City and Contractor, Contractor will provide massage services (the "Services") to City employees as scheduled by the City and Contractor (each, a "Massage Session"). Contractor will primarily provide the Services at City Hall, 77 Fair Drive, Costa Mesa, CA 92626, in a location designated by City, or at another location within the City mutually agreed to by the Parties.

Contractor agrees to arrive at least fifteen (15) minutes prior to each Massage Session, set up, as required, and be ready to begin providing the Services at the time specified herein. Contractor will be solely responsible for the setup and removal of any necessary equipment, including any connections and/or damage to the equipment.

2. **Commencement of Services.** Unless otherwise agreed to by City and Contractor, Contractor shall commence providing services on September 28, 2022.

3. **Compensation.** City agrees to pay Contractor a fee of One Hundred and Eight Dollars (\$108.00) per hour. Contractor may invoice the City on a monthly basis. Each invoice shall detail the dates on which Contractor provided the Services during the prior month. City will pay Contractor's invoice within thirty (30) days from the date City receives each invoice.

4. **Term.** The term of this Agreement shall commence on the Effective Date and continue for a period of three (3) years, ending on September 30, 2025, unless previously terminated as provided herein. Thereafter, this Agreement may be extended by two (2) additional one (1) year periods upon written agreement of the parties.

5. **Termination.** This Agreement may be terminated by City at any time by providing written notice to Contractor. This Agreement may be terminated by Contractor at any time by providing at least thirty (30) days written notice to the City.

6. **Contractor Unavailability.** If Contractor is not able to provide the Services at a Massage Session, Contractor shall notify Itzia Carvajal, Human Resources Administrator, of such

unavailability as soon as possible. Contractor shall provide such notice by both email at itzia.carvajal@costamesaca.gov and telephone at (714) 754-5061.

7. **Notices.** Any notices, documents, correspondence or other communications relating to this Agreement may be provided by personal delivery or mail and will be addressed as set forth below. Such communications will 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. Notwithstanding the foregoing, communications relating to the day-to-day performance of this Agreement may be sent by e-mail.

IF TO CITY:

Ellen Medalle
Human Resources Administrator
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
(714) 754-5104

IF TO CONTRACTOR:

Soothe, Inc.
3705 W. Pico Blvd., PMB 21932
Los Angeles, CA 90019
(833) 276-6843
Attn: Elise Argue

8. **Insurance.** Contractor shall obtain, maintain, and keep in full force and effect during the life of this Agreement 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 the City:

- a. General liability insurance with a limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. The policy shall name the City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers as additional insureds.

Contractor shall provide proof of insurance to the City prior to providing the Services.

9. **Photo/Video Release.** Contractor grants to the City of Costa Mesa the unrestricted and unconditional right and license to record, videotape, photograph, use, reproduce, distribute, publish, or otherwise display Contractor's name, voice, image, photograph, and/or likeness, including but not limited to publications, broadcasts, photographs, slides, videotapes, and other media, whether for commercial or non-commercial purposes.

10. **Indemnification.** Contractor shall defend, with counsel of City's choosing, indemnify, and hold harmless the City and its elected and appointed officials, officers, employees, agents and volunteers, at Contractor's sole expense, from and against any and all claims, actions, suits, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury to or death of any person, and for injury to any property arising out of or in any way connected with the performance of this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Contractor, but shall be required whenever

any claim, action, complaint, or suit asserts as the basis the negligence or misconduct of Contractor, and/or whenever any claim, action, complaint, or suit asserts liability against the City, its elected and appointed officials, officers, employees, agents and/or volunteers based upon the services performed by Contractor under this Agreement, whether or not Contractor is specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, Contractor shall not be responsible 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.

11. **Independent Contractor.** Contractor is an independent contractor and not an employee of City. Contractor shall not employ any person, purchase or rent supplies or equipment, or contract for services or incur any indebtedness or liability of any kind of nature in the name of the City. Contractor shall secure, at Contractor's 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 Contractor. Contractor shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Agreement.

12. **PERS Eligibility Indemnification.** In the event that Contractor 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, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor, 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, Contractor shall not qualify for or become entitled to, and hereby agrees 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.

13. **Compliance with All Laws.** Contractor shall, at Contractor's sole cost and expense, comply with all applicable federal, state, and local statutes, ordinances, regulations, and requirements in the performance of this Agreement.

14. **Assignment.** This is a personal service contract, and the duties set forth herein shall not be delegated, assigned or subcontracted to any person or entity without the prior written consent of City.

15. **Non-Exclusive Agreement.** Contractor acknowledges and agrees that this is a non-exclusive agreement and that City may enter into agreements with other contractors for services similar to the services that are the subject of this Agreement or may have its own employees perform services similar to those contemplated by this Agreement, and Contractor may perform similar services for other entities.

16. **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.

17. **Attorneys' Fees.** In the event that any 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.

18. Entire Agreement; Modifications. 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.

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



Elise Argue
Account Executive

Date: 9/22/22

CITY OF COSTA MESA



Carol Molina
Purchasing Officer

Date: 9/27/22

ATTEST:

 9/28/2022

Brenda Green
City Clerk




APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

Date: 9/28/2022

APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 9/28/22

APPROVED AS TO CONTENT:

EMedalle
Ellen Medalle
Project Manager

Date: 9/27/2022

DEPARTMENTAL APPROVAL:

KLE
Kasama Lee
Human Resources

Date: 9/27/22