

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
PROACTIVE ENGINEERING CONSULTANTS, INC. DBA Q3 CONSULTING**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 15th day of September, 2020 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and PROACTIVE ENGINEERING CONSULTANTS, INC., a California corporation DBA Q3 CONSULTING ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to providing engineering consulting services in connection with the City's Storm Drain System Master Plan Update, 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" (the "Project") 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 City's Request for Proposals ("RFP"), attached hereto as Exhibit "A," and Consultant's Proposal, attached hereto as Exhibit "B," both incorporated herein by this reference.

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 "C," attached hereto and made a part of this Agreement by this reference (the "Fee

Schedule”). Consultant’s total compensation shall not exceed Seven Hundred Sixty-One Thousand Seven Hundred Seventy-Three Dollars (\$761,773.00).

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. Said services shall be performed in strict compliance with the project schedule agreed upon by City and Consultant. 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 September 14, 2025, 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.

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:

Q3 Consulting
27042 Town Center Drive, Suite 110
Foothill Ranch, CA 92610
Tel: (949) 259-6760
Attn: Tom Ryan

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5357
Attn: Naz Mokarram

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 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.

6.11. 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. 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 and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

6.28. 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.

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: _____

[Name and Title]

CITY OF COSTA MESA

Lori Ann Farrell Harrison
City Manager

Date: _____

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management

Date: _____

APPROVED AS TO CONTENT:

Naz Mokarram
Project Manager

Date: _____

DEPARTMENTAL APPROVAL:

Raja Sethuraman
Public Services Director

Date: _____

APPROVED AS TO PURCHASING:

Carol Molina
Finance Director

Date: _____

EXHIBIT A
REQUEST FOR PROPOSALS

EXHIBIT B
CONSULTANT'S PROPOSAL

EXHIBIT C
FEE SCHEDULE

Storm Drain System Master Plan Update
City of Costa Mesa
 August 26, 2020

Q3 Consulting	Project Team Role:	Q3 Labor Hours and Rates							TOTAL HOURS	Q3 CONSULTING LABOR FEE	Subconsultants								TOTAL HOURS	OTHER DIRECT COSTS (ODC's)	TOTAL FEE	
		Principal in Charge	Project Manager	Senior Technical Manager	Engineer/Designer	Design Engineer	Engineer/Technician	Project Surveyor			Two Person Crew	Harris & Assoc. (2)		DCSE Inc. (2)		Hult-Zollars (2)		Innerline Engineering (2)				
		Billable Rate :	\$220	\$200	\$195	\$155	\$134	\$98			\$170	\$285	Hours	Fee	Hours	Fee	Hours	Fee				Hours
Task 0 - Project Administration & Management																						
0.1	Project Management, Meetings & Coordination (9 Meetings - Budgeted)	8	40		18				66	\$12,550			22	\$2,330					88		\$14,880.00	
	Subtotal Task 0:	8	40		18				66	\$12,550			22	\$2,330					88		\$14,880.00	
Task 1 - Existing Conditions Assessment																						
1.1	Kick-Off Meeting	2	6		4				12	\$2,260	11	\$2,420.00							23		\$4,680.00	
1.2	Data Collection and Review		20	16	40	80	24		180	\$26,392			122	\$4,480					302		\$30,872.00	
1.3	Site Assessment and Inspection		2		32	40	8		82	\$11,504			48	\$1,760					130		\$13,264.00	
1.3.1	CCTV (Optional)																					
1.3.1a	Selective CCTV (\$50,000 Budget)																					
1.3.1b	City-Wide CCTV (Linear Foot Cost Estimate) = \$2/H (clean) (1)																			\$50,000.00	\$50,000.00	
1.4	Basemaps																					
1.4.1	Existing Watersheds Map/Database		2		8	8			18	\$2,712			322	\$18,440					340		\$21,152.00	
1.4.2a	City-Wide Digital Color Aerial Photo																					
1.4.2b	City-Wide Topographic Basemap (Full Lidar) (4)		1		1			10	32	\$11,175									44	\$17,500.00	\$28,675.00	
1.4.2c	Supplemental Survey to support OC Topography (Budget \$20k) (4)									\$20,000											\$20,000	
1.5	Existing Hydrologic/Hydraulic Analysis (EHH)																					
1.5.1	Existing Condition Hydrology & Hydraulic Modeling																					
	XPSWMM Model Setup (Surface, SD Infrastructure, Inlets, Outfalls, etc)	1	12	4	40	60	16		133	\$19,208									133		\$19,208.00	
	Model Calibration (Using up to two known Storm Events)	2	16	8	32				58	\$10,160									58		\$10,160.00	
	Hydrology (10-, 25- and 100-year) - Rain on Grid Approach (OC Loss Rates)	2	8	16	120	40			186	\$29,120									186		\$29,120.00	
	Capacity Analyses (Ranking Facilities' Level of Deficiencies)	2	16	40	40				98	\$15,200									98		\$15,200.00	
1.5.2	Advanced Model Purchase, Installation, and Model Overview (XPSWMM)(3)(4)		8	16					24	\$4,080									24	\$30,000.00 (3)	\$34,080.00	
1.6	Draft Existing Conditions Assessment Report (ECAR)																					
	Report & Document Preparation	1	16	4	32	24	8		85	\$13,160									85	\$1,200.00	\$14,360.00	
1.7	Public Outreach and Education Meetings																					
	Public Outreach Plan Development										10	\$2,160.00							10		\$2,160.00	
	(2) Community Workshops	4	10		4				18	\$3,500									18		\$3,500.00	
	(3) City Council Presentations	6	15		6				27	\$5,250	45	\$9,720.00							72		\$14,970.00	
	(2) Committee/Commission Presentations	4	10		4				18	\$3,500	30	\$6,480.00							48		\$9,980.00	
1.8	Final Existing Conditions Assessment Report (ECAR)																					
	Final Report & Document Preparation	2	24		24	24			74	\$12,176									74	\$4,000.00	\$16,176.00	
	Subtotal Task 1:	26	166	48	403	316	56		1057	\$189,397	96	\$20,780.00	492	\$24,700.00				\$50,000.00	1645	\$52,700.00	\$337,577.00	
Task 2 - Storm Drain System Master Plan Update																						
2.1	Proposed Stormwater BMP/SD Improvement Alternatives Map																					
	Water Quality Surch Control BMP Identification & Green Infrastructure		2		16				18	\$2,880					84	\$12,600			102		\$15,480.00	
	Water Quality Regional Facility BMP Identification		2		8				10	\$1,640					150	\$21,990			160		\$23,630.00	
	Proposed Improvement Concept Design (SWAIM) WQ/Green Infrastructure				8				8	\$1,240			978	\$27,160					986		\$28,400.00	
NEW	Research & Development of "Alert" system for Flood Control WQ System	2	4		16				22	\$3,720					100	\$18,300			122		\$22,020.00	
2.2	Proposed Stormwater BMP/SD Hydrologic/Hydraulics Analysis																					
	Deficiency Removal & Alternative Formulations (10-, 25-, 100-year)	2	40	8	120	80	8		258	\$40,104									258		\$40,104.00	
	Drainage Improvement Facility Sizing & Alignments (Concept SWAIM) - Map	1	4		32	16			53	\$8,124									53		\$8,124.00	
	Facility Prioritization	2	16		40	24	8		90	\$13,840									90		\$13,840.00	
2.3	Alternatives Cost Analysis																					
	Watershed Cost Estimates for Proposed Facilities	1	4		32	24	8		69	\$9,980					58	\$8,010			127		\$17,990.00	
2.4	Technical Memorandum																					
	Report & Document Preparation	1	12		20	8	8		49	\$7,576									49		\$7,576.00	
2.5	Public Outreach and Education (See 1.7)																					
2.6	Draft Storm Drain System Master Plan Update		4		8				12	\$2,040	48	\$10,280.00							60		\$12,320.00	
	Develop Stormwater Management Maintenance Plan Report	4	40	4	32	16	8		104	\$17,548									104		\$17,548.00	
2.7	Final Storm Drain System Master Plan Update																					
	Final Report & Document Preparation	1	16		24	8	4		53	\$8,604									53		\$8,604.00	
	Subtotal Task 2:	14	144	12	356	176	44		746	\$117,296	48	\$10,280.00	978	\$27,160.00	392	\$60,900.00			2164		\$215,636.00	
Task 3 - Drainage System Upgrade Fees and Financing Study																						
3.1	Draft Drainage System Upgrade Fees and Financing Study		8						8	\$1,600	168	\$31,580							176		\$33,180.00	
3.2-3.4	See Task 1.7																					
3.5	Final Drainage System Upgrade Fees and Financing Study		4						4	\$800	50	\$9,700							54		\$10,500.00	
	Subtotal Task 3:		12						12	\$2,400.00	218	\$41,280.00							230		\$43,680.00	
Task 4 - Design Phase for Westside Storm Drain Improvements (Budget \$100,000) (4)																						
4.1	Draft Plans, Specifications, and Estimate Phase																					
4.2	Final PS&E (Bid Documents)																					
4.3	Bid Support																					
	Subtotal Task 4: BUDGET AMOUNT									\$100,000											\$100,000.00	
	Additional Scope of Work Items (4)																				\$50,000.00	
	Total Professional Fee	48	362	60	777	492	100		1881	\$421,643.00	362	\$72,340.00	1492	\$54,190.00	392	\$60,900.00		\$50,000.00	4127	\$52,700.00	\$761,773.00	

Notes: 1.) CCTV Fees to be determined.
 2.) Detailed breakdown of subconsultant fees and assumptions are included on the attached separate spreadsheets.
 3.) XP Price based on Standard XPSform 1d/2d Model
 4.) This line item shall only be used as directed in writing by City's Project Manager



Rate Table

Q3 Consulting

<u>MANAGEMENT</u>	<u>HOURLY RATE</u>
Principal	\$220.00
Senior Project Manager, Senior Technical Manager	200.00
Senior Technical Manager	195.00
Director	196.00
Project Manager	180.00

CIVIL ENGINEERING SERVICES

Senior Project Engineer	\$180.00
Project Engineer	170.00
Senior Designer.....	168.00
Engineer, Designer.....	155.00
Design Engineer, Design Technician.....	134.00
CAD Technician, Design Engineer Technician.....	118.00
Project Technician/Project Coordinator.....	103.00
Engineering Technician	98.00
Administration	88.00
Engineering Intern	75.00

Harris & Associates

Senior Project Manager.....	\$260.00
Assessment Engineer	260.00
Senior Project Analyst	150.00
Graphic Designer	150.00

DCSE, Inc.

Principal	\$200.00
Project Manager	180.00
Senior GIS Analyst	150.00
GIS Analyst.....	120.00
GIS Technician - Offshore.....	16.00

Huitt-Zollars

Principal	\$240.00
Senior Project Manager.....	225.00
Civil Engineer	155.00
Engineering Technician	120.00

Innerline Engineering (CCTV)

CCTV per Linear Foot (Clean Pipe)	\$2.00/Linear Foot
CCTV per Linear Foot (Not Clean Pipe).....	\$10/Linear Foot
Cost to Clean Heavily blocked/debris Pipe.....	\$255.00/hour



	Project Manager \$260/hr Hours	Assessment Engineer \$260/hr Hours	Senior Project Analyst \$150/hr Hours	Graphic Designer \$150/hr Hours	Total Estimated Hours	Total Estimated Fee
Storm Drain Financing Study						
Task 1.1 Kick-off Meeting	4	3	4		11	\$ 2,420
Task 1.7 Public Outreach Meeting	4	2	4		10	\$ 2,160
Task 2.6 Draft Storm Drain System Master Plan Update	20	8	20		48	\$ 10,280
Task 3.1 Draft Drainage System Update Fees and Financing Study	30	28	100	10	168	\$ 31,580
Task 3.2 Finance Committee	6	3	6		15	\$ 3,240
Task 3.3 Planning Commission	6	3	6		15	\$ 3,240
Task 3.4 City Council Study Session	6	3	6		15	\$ 3,240
Task 3.5 Final Fee Rate Study	10	10	30		50	\$ 9,700
Task 3.6 City Council Meeting 1	6	3	6		15	\$ 3,240
Task 3.7 City Council Meeting 2	6	3	6		15	\$ 3,240
STORM DRAIN FINANCING STUDY TOTAL	98	66	188	10	362	72,340

*Note: This cost proposal includes all direct costs such as travel, equipment, computers, communications, and reproduction.
Hourly rates effective until December 31, 2020 and are subject to a 3% annual escalation factor on January 1st each year after.*

Assumptions:

- Task 2.6: Assumes we will provide input into the CIP to help with the funding sources and will assist with writing this section of the master plan.
- Task 3: Does not include the actual formation of a user fee or other funding sources but is rather an evaluation of the viability. The report will establish the impact fee.
- Task 3.1: Assumes 4 meetings with the City



COST PROPOSAL FOR STORM DRAIN SYSTEM MASTER PLAN UPDATES IN CITY OF COSTA MESA # RFP SDSMP 2020

TASK 1-3 : STORM DRAIN GIS UPDATES

Required Tasks		Labor Hours					Task Hours	Cost
Task Number	Task Description	Principal-in-Charge (\$200/Hr)	Project Manager (\$180/Hr)	Sr. GIS Analyst (\$150/Hr)	GIS Analyst (\$120/Hr)	GIS Tech - Offshore (\$16/Hr)	Task Hours	Task Cost
Task 0.1	Monthly Meetings, Specifications Document for Conversion	2	4	4	4	8	22	\$ 2,328
Task 1.2	Data Collection - Record Information Document (including needed source inventory - Please see assumptions below) * (3 hard copies and electronic files)		2	4	16	100	122	\$ 4,480
Task 1.3	Site Assessment and Inspection**		2	2	4	40	48	\$ 1,780
Task 1-3 A	Geodatabase Design		2	16	4	16	38	\$ 3,496
Task 1-3 B	Standards Document		2	8	20	16	46	\$ 4,216
Task 1.3 C	Pilot Area GIS Updates*	2	4	16	36	180	238	\$ 10,720
Task 1.3 D	Citywide Area GIS Updates*		4	36	58	880	978	\$ 27,160
Total		4	20	86	142	1240	1492	\$ 54,180

Assumptions

* We are assuming that the total number of as-built sheets that we need to visit are not more than 500 sheets. This estimate of not more than 500 sheets is coming from the existing storm drain of 64.7 miles, and about 12 CIP improvement projects. For Additional as-built sheets, please see optional cost item below (OPT-A).

** DCSE will only incorporate any field data provided into the GIS. We will not be performing any field data collection for this task.

Duration - DCSE will complete the Storm Drain GIS Updates with in 8 months duration from the start of the Project.

Optional Task			
Task Number	Task Description	Unit	Cost per unit
OPT-A	Conversion of additional as-built sheets to Storm Drain GIS	Per sheet	\$ 90



Rates:

Cost per linear foot of Storm Drain CCTV (Clean Condition)	\$2/LF
Cost per linear foot of Storm Drain CCTV (Not Clean)	\$10/LF
Cost for Pipe Cleaning	\$285/Hour
CCTV Operator-Average Daily CCTV Length of Pipe	900 LF

Clarifications:

- 1) Dump Site to be provided by Client
- 2) Innerline will provide Basic Traffic Control. If lane closures are needed, will be provided by Client.
- 3) Entire length of CCTV run will be charged, even if run is not completed due to blockages.

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.