

**SECOND AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTURAL SERVICES FOR THE
POLICE FACILITY RENOVATION AND EXPANSION**

THIS SECOND AMENDED AND RESTATED AGREEMENT (“Amended Agreement”) is made and entered into this _____ day of _____ (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and MEYER & ALLEN ASSOCIATES INC., a California corporation (“Consultant”).

WITNESSETH:

WHEREAS, City and Consultant entered into an agreement dated April 15, 2002 in which Consultant agreed to provide certain architectural services to City (the “Agreement”); and

WHEREAS, City and Consultant now wish to amend and restate the terms of the 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 Basic Services (the “Work”), attached hereto as Exhibit “B” and incorporated herein by this reference. Said Work is for the architectural and related preparatory work necessary for the City’s renovation and expansion of the existing Police Facility (the “Project”) as more particularly described in the Project Description, attached hereto as Exhibit “A” and incorporated herein by this reference. Consultant may provide those additional services as described in Exhibit “B-1” attached hereto and incorporated herein by this reference upon request by City.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Amended 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 circumstances in accordance with sound professional practices. Consultant also certifies that it is familiar with the laws that may affect its performance of this Amended Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Amended Agreement.

1.3. Warranty. Consultant warrants that it shall perform the services required by this Amended 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 Amended 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 Amended Agreement.

1.4. Non-discrimination. In performing this Amended Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

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

1.6. 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 Amended Agreement at Consultant's sole cost and expense.

1.7. Subcontractors. Notwithstanding the above, the City acknowledges that Consultant will be hiring certain subcontractors to perform certain Specialty Services. The Specialty Basic Services are more particularly described in Exhibits "B" and "B-1". The term "Authorized Sub-Contractor" shall mean those Basic Service Consultants and Specialty Consultants identified in Exhibit "E". Consultant shall enter into a written agreement ("Sub-Contract") with all Authorized Sub-Contractors hired by it for the performance of this Amended Agreement. Said Sub-Contract shall require all Authorized Sub-Contractors to meet or exceed the insurance requirements set forth in this Amended Agreement and shall further require all Authorized Sub-Contractor's to indemnify and hold the City and Consultant harmless from said Authorized Sub-Contractor's performance of any work required by this Amended 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 Amended Agreement (the "Fee Schedule"). Consultant's compensation for Consultant's Basic Services shall in no case exceed the sum of Eight Hundred Sixty-Two Thousand Four Hundred Fifteen Dollars (\$862,415.00). Consultant's compensation for Specialty Services shall in no case exceed the sum of Eighty-Eight Thousand and Sixty Dollars (\$88,060.00). The compensation set forth herein above does not include Reimbursable Expenses as defined in Exhibit C.

2.2. Contingent or Optional Additional Services. Consultant shall not receive

compensation for any services provided outside the Scope of Basic Services as set forth in Exhibit "B" unless the City or its Project Manager, prior to Consultant performing any Contingent or Optional Additional Services as described in Exhibits B-1, 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. Compensation for any authorized Contingent or Optional Additional Services shall be as set forth in Exhibits "C" in the amounts set forth in the Schedule of Hourly Rate attached hereto as Exhibit "C-1" and incorporated herein by this reference.

2.3. Method of Billing. Consultant may submit invoices to City's Project Manager for approval on a progress basis, but no more often than monthly. 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 and the associated time for completion. Any additional services approved and performed pursuant to this Amended 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 Amended Agreement shall be kept on a generally recognized accounting basis and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the commencement of this Amended Agreement.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Amended Agreement shall be performed in strict compliance with the project schedule approved by City as set forth in Exhibit "D," attached hereto and incorporated herein by this reference. Said project schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Amended 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 Amended Agreement shall commence on the Effective Date and continue for a period of thirty-six (36) months, ending December 16, 2008, 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 Amended Agreement, with or without cause, at any time, by providing written notice to Consultant. In the event of such termination, Consultant shall immediately stop rendering

services under this Amended 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 as to the percentage of work completed as of the date of termination in accordance with the Fee Schedule. In ascertaining the professional services actually rendered hereunder up to the date of termination of this Amended Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents whether delivered to the City or in the possession of the Consultant.

4.4 Documents. In the event of termination of this Amended Agreement, all documents prepared by Consultant in its performance of this Amended 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 not commence any Work under this Amended Agreement until it has obtained all insurance required under this section and City has approved the insurance as to form, amount, and carrier, nor shall Consultant allow any subcontractor to commence any Work until all similar insurance required of the subcontractor has been obtained and approved.

Neither the failure of Consultant to supply specified insurance policies and coverage, nor the failure of City to approve same shall alter or invalidate the provisions of Paragraph 6.9 of this Amended Agreement.

Consultant shall obtain and maintain during the life of this Amended Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million (\$1,000,000.00) Dollars, combined single limits, per occurrence and aggregate.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million (\$1,000,000.00) Dollars, combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.

- (d) Professional errors and omissions (“E&O”) liability insurance with policy limits of not less than One Million (\$1,000,000.00) Dollars, combined single limits, per claim and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Amended Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The comprehensive general liability and automobile liability insurance policies 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, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall be cancelled until thirty (30) days after written notice is given to City. Except that said policy may be cancelled after ten (10) days written notice for non-payment of premium."
- (c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

5.3. 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 Amended Agreement.

5.4. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Amended 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 Amended Agreement constitutes the entire Amended Agreement between the parties with respect to any matter referenced herein and supersedes the Agreement and any and all other prior writings and oral negotiations. This Amended Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. This Amended Agreement will amend and restate the Agreement to read as set forth herein, when it has been duly executed by parties having the right to so amend and restate the Agreement. The terms of this Amended Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Amended Agreement.

6.2. Representatives. The City Manager or his designee shall be the representative of City for purposes of this Amended Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Amended Agreement, except as otherwise expressly provided in this Amended Agreement.

Consultant shall designate a representative for purposes of this Amended Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Amended Agreement, except as otherwise expressly provided in this Amended Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Amended 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 Amended 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 Amended Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. If such communication is sent through regular United States mail, it shall be deemed served or delivered 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark.

IF TO CONSULTANT:

Meyer & Allen Associates
2690 Beachwood
Los Angeles, CA 90068

Attn: Clifton P. Allen, AIA

IF TO CITY:

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

Attn: Tom Warnack

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 "F" 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 Amended Agreement and shall be cause for immediate termination of this Amended Agreement by City.

6.6. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Amended 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 Amended Agreement shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Amended 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 Amended Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Amended Agreement and cause for termination of this Amended 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 Amended Agreement.

6.9. Indemnification and Hold Harmless: Consultant shall protect, defend, indemnify and hold harmless City and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, errors or omissions of Consultant, its employees and/or authorized agents or subcontractors in the performance of this Amended Agreement. Consultant shall require any and all subcontractors to afford the same degree of indemnification to the City and its elected and appointed boards, officers, agents, and employees that is required of Consultant and shall incorporate identical indemnity provisions in all contracts between Consultant and its subcontractors.

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 secure, at his 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.

6.11 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 Amended Agreement, shall be and remain the sole property of City during the performance of and upon termination of this Amended Agreement. 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, 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 or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any plans, specifications, studies, reports, drawings or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.12 Public Records Act Disclosure: Consultant has been advised and is aware that 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, 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 which Consultant informs City of such "Trade Secret."

“Confidential,” or “Proprietary” status. The City will endeavor to maintain as confidential all information obtained by it that is designated as proprietary. The City shall not, in any way, be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by order of the Court.

6.13. Responsibility for Errors. Consultant shall be responsible for its work and results under this Amended 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 Amended 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.

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

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

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

6.17. No Third Party Beneficiary Rights: This Amended 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 Amended Agreement and no third party shall have any right in, under or to this Amended Agreement.

6.18. Headings: Paragraphs and subparagraph headings contained in this Amended 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 Amended Agreement.

6.19. Construction: The parties have participated jointly in the negotiation and drafting of this Amended Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Amended Agreement, this Amended 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 Amended Agreement.

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

6.21. Waiver: No waiver of any provision of this Amended 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.

6.22. Severability: If any provision of this Amended 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.

6.23. Counterparts: This Amended 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.

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF COSTA MESA,
A municipal corporation

CONSULTANT

Mayor of the City of Costa Mesa

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

Deputy City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Acting City Attorney

Project Manager

EXHIBIT “A”

PROJECT DESCRIPTION

IF YOU ARE INTERESTED IN VIEWING THE REMAINDER
OF THE THIS DOCUMENT
PLEASE CONTACT THE CITY CLERK’S OFFICE
AT (714) 754-5221

EXHIBIT “B”

SCOPE OF BASIC SERVICES

EXHIBIT “B-1”

ADDITIONAL SERVICES

EXHIBIT “C”
COMPENSATION

EXHIBIT “C-1”

HOURLY FEE SCHEDULE

EXHIBIT “D”

PROJECT SCHEDULE

EXHIBIT “E”

CONSULTANT TEAM AND SPECIALTY CONSULTANTS

EXHIBIT “F”

CITY COUNCIL POLICY 100-5

EXHIBIT “G”

**ADDITIONAL SERVICES FOR IMPLEMENTATION OF
SELECTED TENANT IMPROVEMENTS AT THE BASEMENT**

EXHIBIT “H”

**PHASE “0” TENANT IMPROVEMENT
FLOOR PLAN**

EXHIBIT “I”

**ADDITIONAL SERVICES FOR IMPLEMENTATION OF SITE
FENCING IMPROVEMENTS**

EXHIBIT “J”

SITE FENCING SKETCHES

EXHIBIT “K”

**ADDITIONAL SERVICES FOR OWNER REQUESTED
CHANGES TO CONSTRUCTION DOCUMENTS**