

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
WITTMAN ENTERPRISES, LLC**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this 1st day of August, 2018 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and WITTMAN ENTERPRISES, LLC, a California limited liability company (“Consultant”).

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide ambulance billing services, as more fully described herein; and

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

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

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

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the Scope of Work, 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. For the first two years of the term of this Agreement, Consultant shall be paid a fee per imported incident in accordance with the Fee Schedule set forth below. Prior to the commencement of the third year of the term, City and Consultant may agree to change the method of Consultant's compensation to a percentage of net collections in accordance with the Fee Schedule set forth below. Such change shall be effective on the first day of the third year of the term and shall be effective for the remainder of the term. If City and Consultant do not

agree to change the method of compensation to a percentage of net collections, City shall pay Consultant according to the per-imported incident fee schedule set forth in Exhibit B for the remainder of the term. Consultant’s annual compensation shall not exceed Two Hundred Forty Thousand Dollars (\$240,000.00).

**Fee Schedule:**

Services	Fee
<p align="center"><b>Contract Years 1-2</b></p> <p align="center">Ambulance Billing and Collection            First Responder Billing and Collection            Assessment (treat-no-transport) Billing and Collection            Patient Satisfaction Surveys (10% of patient contacts)</p>	<p align="center"><b>\$19 per imported incident (ePCR ticket)</b></p>
<p align="center"><b>Contract Years 3-5</b></p> <p align="center">Ambulance Billing and Collection            First Responder Billing and Collection            Assessment (treat-no-transport) Billing and Collection            Patient Satisfaction Surveys (10% of patient contacts)</p>	<p align="center"><b>4.25% of net collections*</b></p> <p align="center"><b>*Upon approval of City and Consultant</b></p>

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

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

2.4. Records and Audits. Records of Consultant’s services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

**3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts

shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

#### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of five (5) years, ending on July 31, 2023, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by five (5) additional one (1) year periods upon mutual written agreement of both parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

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

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

#### **5.0. INSURANCE**

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

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

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

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

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

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

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

## **6.0. GENERAL PROVISIONS**

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

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

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

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Wittman Enterprises, LLC  
11093 Sun Center Dr.  
Rancho Cordova, CA 95670  
Tel: (916) 669-4608  
Attn: Russ Harms

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5155  
Attn: Jason Pyle

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, and 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 or in connection with Consultant's, or Consultant's employees', agents', or subcontractors' performance of this Agreement. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur

any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other related items as requested by City or its authorized representative, at no additional cost to the City.



6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

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

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

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

6.20. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.21. Headings. Paragraphs and subparagraph headings contained in this Agreement

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

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

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

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

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

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

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

[Signatures appear on following page.]

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

**CONSULTANT**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name and Title]

\_\_\_\_\_  
Social Security or Taxpayer ID Number

**CITY OF COSTA MESA**

\_\_\_\_\_  
Thomas Hatch  
City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Brenda Green  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas Duarte  
City Attorney

Date: \_\_\_\_\_

**APPROVED AS TO INSURANCE:**

\_\_\_\_\_  
Ruth Wang  
Risk Management

Date: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Jason Pyle  
Project Manager

Date: \_\_\_\_\_

DEPARTMENTAL APPROVAL:

\_\_\_\_\_  
Daniel Stefano  
Fire Chief

Date: \_\_\_\_\_

APPROVED AS TO PURCHASING:

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

Date: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF WORK**

**SCOPE OF WORK  
FOR  
AMBULANCE BILLING & COST RECOVERY SERVICES**

**INTRODUCTION**

The City of Costa Mesa Fire & Rescue Department (CMF&R) is requesting proposals from qualified organizations to enter into a contract for the provision of ambulance billing and cost recovery services for the Emergency Medical Services (EMS) provided by CMF&R. Qualified organizations must have extensive experience and specialize in the invoicing, categorizing, recording, monitoring, supervising, and managing of ambulance billing and EMS cost recovery systems/services.

**SCOPE OF WORK**

The organization that is awarded a contract for this RFP process (hereinafter “Contractor” or “Proposer” depending on context) shall at all times comply with the Health Insurance Portability and Accountability Act (HIPAA) and all other applicable federal, state, and local laws. All services are to be provided in two (2) methodologies: 1) A fee-based percentage of actual collected revenue; and 2) A per-call fee for each incident. CMF&R reserves the right to select which method will be used for actual payment of services. No “up front” or ongoing costs will be borne by CMF&R, nor will CMF&R provide any staff to support the contract.

Proposers shall be responsible for modifying their billing systems to capture all necessary data generated from this program as an electronic file and provide a description of the electronic file needed to receive data transmitted from CMF&R. Proposers shall work with CMF&R and CMF&R’s ePCR vendor to identify data input gaps, errors or other data needs, and describe a means of obtaining solutions to these problems. Proposers shall provide information on their organization’s experience with ePCR software, including a complete list of their customers who are utilizing ePCRs and the name and contact information of the software companies utilized. Proposers shall provide a complete package describing billing and collections, follow-up, account posting, and accounts receivable reconciliation and reporting services.

The City currently transports approximately 7,000 patients per year through a third party ambulance provider. The City anticipates directly providing ambulance transport services via three 24hr fire based ambulances.

The current payer mix consists of;  
Medicare/Medicare HMO 35%  
Medi-Cal/HMO 26%  
Commercial Insurance 28%  
Private Pay 11%

The list below describes the **minimum** services required of Contractor:

1. Provide all tested and working software, tested and working hardware, and technical support associated with the billing, receivables process and debt collections to support up

to 10,000 collections for Emergency Medical Services. The software and hardware shall ensure complete and uninterrupted back-up with a date recovery system, should a disaster or other unforeseen interruption occur. All software and hardware costs shall be borne by Contractor.

2. Provide daily pick up and receipt of billing forms (hard copy or electronic), correspondence, and reports from CMF&R Fire Administration (City Hall, 77 Fair Drive, 5th Floor, Costa Mesa, CA, 92626) during normal business, unless otherwise specified by the Fire Chief. CMF&R Fire Administration normal business hours are 08:00 A.M. - 05:00 P.M., Monday through Friday, excluding official holidays. All costs are to be borne by Contractor.
3. Have the capability to fully integrate and support CMF&R's selected ePCR application. CMF&R currently utilizes an iPad based ePCR system.
4. Provide a monthly reconciliation of the data received from CMF&R's patient care records with the amount it has billed to customers explaining differences, if any.
5. Maintain the software and hardware necessary to fulfill all of CMF&R's requirements. Support service and maintenance of the software and hardware is the responsibility of Contractor for the duration of the contract.
6. Maintain updated and current Technology that will continuously provide the highest level of reimbursement and customer service possible.
7. Transmit billing data electronically to all customers accepting electronic claim submission. Contractor shall have the ability to provide itemized billing statements based on CMF&R's EMS fee schedule and provide itemized billing receipts in both paper and electronic formats depending on the needs of the customer.
8. Work with the County of Orange and do screening of all medically indigent patients.
9. Have the ability to receive patient care documentation on paper and electronically. Verify the receipt of these documents and return confirmation to CMF&R.
10. Research and follow up on all accounts with inadequate billing information to include:
  - a. Contact the EMS Bureau for missing and/or incomplete information which may be found in the CMF&R reports.
  - b. Contact receiving hospital for missing and/or incomplete billing information needed from the admitting/registration records.
  - c. Contact patient family members or emergency contacts for information.
  - d. Refer to zip code/street directories for acquisition of incomplete/missing address information.
  - e. Mail inquiries to the patient.
11. Generate appropriate itemized charges from approved fee schedules provided by CMF&R.

12. Meet or exceed mutually agreed upon collection targets.
13. At a minimum of every 30 days, provide to CMF&R a list of accounts turned over to collections that includes the reason why the account was unable to be collected.
14. Review all patient records and report to CMF&R all accounts deemed delinquent per a pre-defined timetable.
15. Provide quarterly analysis identifying at a minimum percent of collection, timelines from billing to receiving payment, number and types of complaints and other data deemed necessary for business planning and future analysis.
16. Forward refund requests and associated back-up documentation in a timely manner to CMF&R for processing.
17. Screen each document for completeness of data and level of services, codes, and procedures for billing purposes.
18. Be responsible for mailing the Customer Satisfaction Survey provided by CMF&R. The survey content may be modified at any time during the contract period CMF&R's discretion. Customer complaints and compliments with follow-up information shall be provided to CMF&R in hard copy or by electronic media.
19. Maintain accurate data and report quarterly on records for all accounts including but not limited to, all customer contact, notices, mailing, itemization, small claims, bankruptcy filings, miscellaneous requests, inquiries, correspondence documents, accounting records, and transactions. CMF&R requires data fields to support on-going planning, and statistical analysis. All records shall be made available to CMF&R upon request. Contractor shall guarantee the confidentiality, security, and safety of all files, documents, and information provided by CMF&R.
20. Provide access to its system wherein it can run weekly detail and summary financial reports in Excel or similar format for each billing type (e.g., patient transport, assessment at scene, first responder fee.) The reports shall contain, at a minimum, the following information:
  - a. Amount billed
  - b. Amount collected
  - c. Amount refunded
  - d. Amount sent to collection
  - e. Amount written off

If such is not possible, then Contractor shall deliver such reports to CMF&R on a weekly basis.
21. Exercise its best ethical, prudent, lawful, and professional efforts to secure payments on all accounts referred by CMF&R. Collection activities shall comply with HIPAA and all other applicable federal, state, and local laws.



22. Post all payment to accounts and process refunds and adjustments in a correct and timely manner in accordance with the procedures approved by CMF&R. All bills to customers shall state the "City of Costa Mesa" as the payee and their payments deposited directly in full (i.e., without deducting Contractor's fees) to a designated bank account. All credit card transactions shall also be processed in the same manner. Contractor shall provide a detailed bill to CMF&R on a monthly basis.
23. Handle all telephone calls and correspondence in a timely, professional, courteous, and compassionate manner.
24. Be responsible for all customer billing inquiries and retrieval of records during normal business hours.
25. Any notification to Contractor that an attorney is handling a personal injury case for a patient shall result in Contractor sending a lien to the attorney that will request that the attorney and patient both execute the lien. Contractor shall have a process to follow up on the status of these lien accounts. Contractor shall also immediately notify the CMF&R Division Chief telephonically whenever it is made aware that there is possible legal action being taken against CMF&R / the City of Costa Mesa.
26. Assign a customer service representative(s) to provide customer service and answer any billing-related questions.
27. Provide a nationwide toll-free telephone number(s) for billing inquiries.
28. Routinely meet with CMF&R to discuss problems, special needs, future changes, updates in software, technology, statistical data requests, or other issues.
29. Monitor all billing and regulatory changes impacting reimbursements and adjust its system to ensure regulatory compliance; Update CMF&R of such changes with an explanation of how it will affect CMF&R and its customers.
30. Provide continuous training for Contractor's staff, updating them immediately on all changes in the industry or government regulations that may have an impact on services being provided to CMF&R.
31. Provide assistance and on-site training for CMF&R administration staff on developing procedures to ensure that CMF&R is in compliance with all applicable federal, state, and local laws.
32. Coordinate all disputed claims with the designated CMF&R representative.
33. Agree to negotiate in good faith with CMF&R at the termination of the contract, the best manner to transition active accounts. Contractor agrees to deliver to CMF&R a computerized file of active accounts, in a format agreeable to CMF&R.

34. Have current administrative support, technical support, and fiscal capability to provide and manage the proposed services of more than 10,000 bills, collections, data analysis, and support technical hardware and software advancements each year. Have the current capability to ensure an adequate audit trail.
35. Produce specialized “on request” reports containing any or all of the previously listed information in a timely manner or based on a standardized schedule.
36. Have the ability to customize billing forms and follow-up letter per CMF&R requirements.
37. Upon request, make all books and records available to both internal and external auditors.
38. Coordinate with existing service provider to transition current accounts with minimal disruption to service.
39. Upon implementation of contract, be able to process any backlog of billing within 30-days of the implementation date.

**EXHIBIT B**  
**CONSULTANT'S PROPOSAL**

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

**EXHIBIT D**

**CITY COUNCIL POLICY 100-5**

**CITY OF COSTA MESA, CALIFORNIA**

**COUNCIL POLICY**

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BACKGROUND

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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

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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:

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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;

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- 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.