

CITY OF OCEANSIDE**PROFESSIONAL SERVICES AGREEMENT****PROJECT: Street Market Mobile Barriers CIP20-00007**

THIS AGREEMENT, dated _____, 20__ for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Meridian Rapid Defense Group, LLC, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: CONSULTANT will provide deployment, delivery, pick up, and other related services to the CITY for equipment purchased from CONSULTANT and owned by the CITY and stored when not in use at CITY facilities. Such equipment shall include MERIDIAN mobile vehicle barriers, haulers, trailers, beam gates, and any other mutually agreed upon safety support services for selected events, locations, and venues within the CITY. As set forth in Exhibit A, said deployments may be on an event-by-event basis and/or an established and recurring schedule of deployments. CONSULTANT may also provide MERIDIAN equipment to CITY on a rental basis if and as determined by further agreement of the Parties.
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY. CONSULTANT shall be solely responsible for the performance of its employees, agents, and subcontractors under this Agreement, including the training of each employee regarding the rights and responsibilities of an employer and employee for any potential discrimination or harassment claim under state or federal law. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply

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with such provisions, and provide certification of such compliance as a part of this Agreement.

4. LIABILITY INSURANCE.

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 2,000,000
General Aggregate	\$ 4,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 2,000,000
General limit project specific aggregate	\$ 4,000,000

<u>Automobile Liability Insurance</u>	\$ 2,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance

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coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

- 4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6 CONSULTANT shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **ACCESS TO CITY FACILITIES.** Access to the City Operations Center is restricted for security purposes. CONSULTANT will be issued a keycard for designated CONSULTANT staff to open the gates for access to the City Operations Center storage area before and after normal hours of operation. CONSULTANT to provide CITY with a list of staff who will utilize a keycard for access to the City Operations Center.

Access to the City Operations Center is intended only for CONSULTANT staff to pick up and return trailer kits that are stored in a designated area as shown in Attachment A. CONSULTANT staff shall not access any area of the City Operations Center that is not required in order to perform the tasks to pick up or return the trailer

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kits.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify, protect, defend and hold CITY and CITY's officers, employees, employees, agents, and volunteers harmless and free from any and all claims, liabilities, lawsuits, judgments, or expenses arising out of or relating to a negligent act, negligent omission, or wrongful conduct that is sustained from or related in any way to CONSULTANT's performance of its services pursuant to this Agreement. CONSULTANT's vehicle barriers and related equipment and technology are Certified and Designated by the U.S. Department of Homeland Security under The SAFETY Act as Qualified Anti-Terrorism Technology ("QATT") and thereby the Federal Government provides extensive indemnifications and protections from liabilities to CONSULTANT and CONSULTANT's customers for claims arising out of an act or acts of terrorism.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$117,000.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the CITY. CONSULTANT shall obtain approval by the CITY prior to performing any work that results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall

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be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

- 11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

- 12. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days' written notice to the other party. If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

- 13. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

[NAME OF CONSULTANT]
By: _____
Name/Title
By: _____
Name/Title

Employer ID No.

CITY OF OCEANSIDE
By: _____
City Manager
APPROVED AS TO FORM:

City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

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Exhibit A

-On each Thursday as designated by the CITY, Meridian staff to pick up two (2) trailer kits each with nine (9) barriers owned and maintained in storage by the CITY at the City Operations Center, and transport them to the downtown location for the Farmers' Market;

-Meridian staff to unload the barriers from the trailers, and deploy the barriers at two street entrances for the Farmers' Market;

-Meridian staff to stay on site during Farmers' Market in case barriers need to be moved and to move the barriers if and as necessary;

-At the conclusion of that day's Farmers' Market, Meridian staff to move the barriers from the two street entrances for the Farmers' Market, to two different street entrances for the Sunset Market.

-Meridian staff to stay on site during Sunset Market in case barriers need to be moved and move the barriers if and as necessary;

-At the conclusion of that day's Sunset Market, Meridian staff to load the barriers onto the trailers, and return the trailers to City Operations Center.

Access to the City Operations Center is restricted for security purposes. Meridian will be issued a keycard for designated Meridian staff to open the gates for access to the City Operations Center storage area before and after normal hours of operation. Meridian to provide CITY with a list of staff who will utilize a keycard for access to the City Operations Center.

Access to the City Operations Center is intended only for Meridian staff to pick up and return trailer kits that are stored in a designated area as shown in Attachment A. Meridian staff shall not access any area of the City Operations Center that is not required in order to perform the tasks to pick up or return the trailer kits.