



CITY COUNCIL AGENDA REPORT

MEETING DATE: FEBRUARY 21, 2006

ITEM NUMBER:

SUBJECT: PROFESSIONAL SERVICES AGREEMENT WITH TEMPLETON PLANNING GROUP FOR PREPARATION OF ENVIRONMENTAL DOCUMENT FOR THE WESTSIDE LOFTS LOCATED AT 1640 MONROVIA

DATE: FEBRUARY 7, 2006

FROM: DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTATION BY: DONALD D. LAMM, DEPUTY CITY MGR./DEV. SVS. DIRECTOR

**FOR FURTHER INFORMATION CONTACT: CLAIRE L. FLYNN, AICP, SENIOR PLANNER
(714) 754-5278**

RECOMMENDATION:

1. Award an environmental consulting contract to Templeton Planning Group at 1470 Jamboree Road, Suite 200, Newport Beach, California in the amount of **\$43,100**.
2. Authorize the Mayor to sign the Professional Services Agreement.

BACKGROUND:

In December 2005, City Council approved a General Plan screening request from Nexus Development for a change in the General Plan land use designation from Light Industry to High Density Residential for the property located at 1640 Monrovia Avenue. This property formerly served Eaton Industries, Inc.

ANALYSIS:

Nexus Development has submitted a planning application for a General Plan amendment and rezone of the project site to allow construction of 137 residential units. Pursuant to the California Environmental Quality Act, the preparation of an initial study/mitigated negative declaration would be required.

Templeton Planning Group was selected subsequent to the release of a Request for Proposals (RFP) to three environmental consulting firms. For nearly 30 years, Templeton Planning Group has provided land planning consulting services offering the three distinct and interrelated disciplines: planning, design and environmental services. The firm is made up of professionals who possess a multitude of talents and are familiar with a multi-disciplinary team approach, demanding schedules, and writing reports to withstand agency, public, and legal scrutiny. Their experience in community planning and expertise in environmental issues qualifies them to prepare the environmental document.

ALTERNATIVES CONSIDERED:

1. Authorize Mayor to sign Professional Services Agreement. The project applicant, Nexus Development, supports the approval of the contract award. This would allow the environmental analysis to proceed immediately.
2. The alternative to this Council action would be to reject the proposal. If this proposal is rejected, the City is required to reinitiate the RFP process. This would delay the preparation of the environmental document and entitlement process for this project.

FISCAL REVIEW:

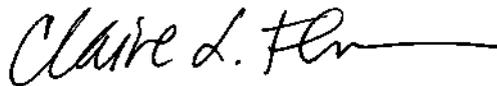
Fiscal review is not required for this project. The environmental contract expenses and the City's 10 percent administration fee will be entirely borne by the applicant.

LEGAL REVIEW:

The City Attorney's office has reviewed the attached Professional Services Agreement and approved it as to form.

CONCLUSION:

Staff recommends that Templeton Planning Group, Inc. be awarded the environmental consulting contract for the preparation of an environmental document for the proposed 135-unit Westside Lofts development. Staff believes that this firm is qualified to complete the work in a comprehensive and timely manner, based on their relevant experience and technical expertise.



CLAIRE L. FLYNN, AICP
Senior Planner



DONALD D. LAMM, AICP
Deputy City Mgr./Dev. Svs. Director

DISTRIBUTION: City Manager
City Attorney
Public Services Director
City Clerk (2)
Staff (4)
File (2)

Cindy Nelson
Nexus Development
1 MacArthur Place, Suite 300
Santa Ana, CA 92707

Nicole Morse
Templeton Planning Group
1470 Jamboree Road, Suite 200
Newport Beach, California

ATTACHMENTS: 1. Professional Services Agreement

File Name: 022106TempletonPSA

Date: 020906

Time: 1:00 p.m.

CITY OF COSTA MESA, CALIFORNIA
Purchase Requisition

Requisition Number
 (Assigned by Purchasing)

Purchase Order Number
 (Assigned by Purchasing)

Business Unit: CITY OF COSTA MESA	Date Requisitioned: 02/08/06
Department: Development Services	Division: Planning
Ship To Address: 77 Fair Drive, 2 nd Floor Costa Mesa, CA 92626	
Contact Person: Claire Flynn, Senior Planner	Phone Number: (714) 754-5278

Item No.	Quantity	Unit	Items (Give Full Description: Size, Catalog No. Etc.)	Unit Price	Estimated Amount	
1	1	LT	Professional Svs. Agreement – TEMPLETON PLANNING		\$43,100.00	
			GROUP for initial study/mitigated negative declaration			
			for a proposed 135-unit resid. development at 1640			
			Monrovia.(EIR)			
			(Signed Contracts and Insurance information attached)			
Const./Prof. Svs. Agmt. Completion Date:					Estimated Total Cost †	\$43,100.00

Item No.	Account	Fund	Dept./Org.	Program	Project	Amount
1	215520	701				\$38,790.00
1	435120	101	18200	20310		\$4,310.00
Total †						\$43,100.00

Dept's Suggested Vendor: Templeton Planning Group
 Address: 1470 Jamboree Road, Suite 200
 City, State, Zip Code: Newport Beach, CA 92660-6202
 Phone: (949) 714-0640 FAX (949) 718-0655
 Vendor's Contact Person: Peter Templeton, Principal

Ordered By: _____
 Department Director/Authorized Signature

Approved By: _____
 Director of Finance/Purchasing Officer

Approved By: _____
 City Manager (when required)

PURCHASING DIVISION USE ONLY	
Purchase Order Vendor ID:	Buyer:
Ship To:	Location:
Standard Comments:	Ship Via:
Delivery/Completion Due Date:	Payment Terms:
Freight Terms:	Freight Amount:

FINANCE DEPARTMENT USE ONLY	
Available Appropriation:	
Special Terms/Condition:	

**PROFESSIONAL SERVICES AGREEMENT FOR
ENVIRONMENTAL CONSULTING SERVICES**

THIS AGREEMENT is made and entered into this _____ day of _____, 2006 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and TEMPLETON PLANNING GROUP, a California corporation (“Consultant”) and NEXUS DEVELOPMENT (“Applicant”).

WITNESSETH :

- A. WHEREAS, City and Applicant propose to have Consultant prepare an initial study/mitigated negative declaration for a proposed residential development project at 1640 Monrovia Avenue as described herein below; 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 specific services in connection with the project described below (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 California Government Code, Sections 1090-1092, 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 Proposal (“RFP”) attached hereto as Exhibit “A” and incorporated herein by reference and Consultant’s Response to City’s RFP (the “Response”). A copy of said Response is attached hereto as Exhibit “B” and 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. 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.

1.4. 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, religion, color, national origin, ancestry, age, 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 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.

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

2.0. COMPENSATION, DEPOSITS AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibits "B" and "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed Forty Three Thousand One Hundred Dollars (\$43,100.00), one hundred percent (100%) of which shall be paid by Applicant. City shall not be responsible for payment of any services provided under this Agreement.

2.2 Deposits. Applicant may, at its discretion, make an initial deposit of fifty percent (50%) of the total amount due, with the remaining fifty percent (50%) payable no fewer than sixty (60) days from the effective date of the Agreement. In the event Applicant withdraws from the Project, for any reason, such deposit remains the responsibility of Applicant. Any remaining amount due is immediately payable upon withdrawal and any amount already deposited to City's EIR Trust Fund is non-refundable. In the event the agreement is terminated prior to Consultant performing any work under the agreement, the deposited funds shall be held in the City's EIR Trust Fund until such time as a new consultant is hired to perform the work. Should Applicant decide to stop work under the agreement, and if no work has been performed by Consultant, the Agreement will be terminated and the deposit refunded to Applicant. If the agreement is terminated while work is in progress, a prorated amount relative to the percentage of work completed as of the effective date of termination shall be paid to Consultant from the deposits held by City. Should the total amount of deposits in the EIR Trust Fund be insufficient to pay Consultant because additional monies are due from Applicant, the prorated share amount shall be immediately due and payable to City from Applicant.

2.3. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Response unless the City or the Project Manager for this Project, 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.

2.4. 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 Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. 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 approved by City as set forth in Exhibit "___," attached hereto and incorporated herein by this reference. The 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 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 one (1) year ending on February 20, 2007, 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 as to 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 and maintain during the life of this 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 Dollars (\$1,000,000.00), 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 Dollars (\$1,000,000.00), 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 Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. 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 comprehensive general liability insurance 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, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (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 Agreement.

5.4. 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 designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and

- 6.3. 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, facsimile 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; b) at the time of transmission if such communication is sent by facsimile; and c) 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:

Templeton Planning Group
1470 Jamboree Road, Suite
200
Newport Beach, CA 92660-
6202
Tel: 949-714-0640
Fax: 949-714-0655
Attn: Peter Templeton

IF TO CITY:

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

Tel: 714-754-5278
Fax: 714-754-4856
Attn: Claire Flynn

IF TO APPLICANT:

NEXUS Development
1 MacArthur Place, Suite
300
Santa Ana, CA 92707
Tel: 714-546-5600
Fax: 714-546-5660
Attn: Cynthia J. Nelson

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 "E" 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 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, error or omissions of Consultant, its employees, agents or subcontractors in the performance of this Agreement.

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 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.

6.12. 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 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.

6.13 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 for a period of three (3) years from the Effective Date.

6.14. 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.

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

6.16. 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 the RFP or the Response, 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 both the Response and the RFP and the Response shall govern over the RFP.

6.17. 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.

6.18. 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.

6.19. 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.

6.20. 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.

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

6.22. 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.

6.23. 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 as 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.

6.24. 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.

6.25. 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.

CITY OF COSTA MESA,
A municipal corporation

Mayor of the City of Costa Mesa

Date: _____

TEMPLETON PLANNING GROUP

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

NEXUS DEVELOPMENT

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

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

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO CONTENT:

Project Manager

Date: _____

APPROVED AS TO INSURANCE:

Risk Management

Date: _____

EXHIBIT A
CITY'S REQUEST FOR PROPOSAL

Due: 12:00 noon,
Wednesday, January 25, 2006



REQUEST FOR PROPOSAL

*Environmental Consultant for Preparation of
Initial Study/Mitigated Negative Declaration*

DISTRIBUTION



Mr. William Halligan
Principal
Templeton Planning
1470 Jamboree Rd., Ste #200
Newport Beach, CA 92660



Ms. Anna Lieberman
Project Manager
Vandermost Consulting
26300 La Alameda, Suite 340
Mission Viejo, CA 92691



Mark J. Brodeur, FIUD
Principal
RRM Design Group
31831 Camino Capistrano, Suite 200
San Juan Capistrano, CA 92675

SCOPE OF WORK

The City of Costa Mesa invites you to submit a letter proposal (about 4-5 pages) for environmental consulting assistance. The work activity includes preparation of an initial study/mitigated negative declaration for a proposed 135-unit residential development project at 1640 Monrovia Avenue, Costa Mesa. The environmental consultant shall also prepare responses to comments on the environmental document and attend public hearings. Please note: A traffic study, preliminary water quality management plan, preliminary grading plan, and water demand study are being provided by the applicant for this project. Please do not include consulting work related to these studies in your proposal.

PROJECT DESCRIPTION

See attached.

DEADLINE

Please submit a scope of work and budget for this work activity by **12 Noon on Wednesday, January 25, 2006.**

TASK 1 – PROJECT INITIATION

Consultant will attend a kick-off meeting with the applicants' project teams and City staff to discuss the project and the proposed scope of work. Consultant will identify data needs, project objectives, and ensure that deliverables are consistent with the overall project timeline.

Deliverable

Kick-off meeting

TASK 2—INITIAL STUDY

Consultant will work with City staff and the applicants to prepare a project description THE will articulate the proposed development activity, required discretionary approvals, and any other pertinent information. Information provided by the applicants will be the basis for the project description.

Consultant will prepare all required CEQA forms including Notice of Availability, Initial Study (IS), and distribution list for review and comment by the City of Costa Mesa. All conclusions and substantiating information will be documented in the IS/MND. Consultant will finalize and distribute the IS/MND by certified mail to all responsible, trustee, and interested agencies, community groups, and individuals.

Deliverable

Initial Study

Circulated documents to Distribution List

TASK 3—PREPARE 1st SCREENCHECK IS/MND

Consultant will prepare the environmental impact evaluation for the Screencheck IS/MND. City staff will not prepare any IS/MND sections but will provide to the Consultant any required information to complete the analysis. If staff comments are extensive, a 2nd screencheck IS/MND submittal may need to be provided. Otherwise, only a second review of major sections will be requested. An additional review cycle of a 2nd screencheck document should be budgeted in the case it is needed.

Deliverable

Screencheck IS/MND

TASK 4—PREPARE PROOFCHECK DRAFT IS/MND

Upon receipt of the City's and applicants' comments on the screencheck IS/MND submittal, Consultant will make revisions and resubmit the document as a PROOFCHECK IS/MND. A proofcheck IS/MND is the final print copy of the IS/MND before printing. No major comments on the document are anticipated from City staff at this level of the review.

Deliverable

Proofcheck IS/MND

TASK 5—CIRCULATION OF DRAFT IS/MND

The proofcheck document with any revisions requested by City staff will serve as the Draft IS/MND. Consultant will prepare and distribute copies of the draft IS/MND to the State Clearinghouse and local community groups, local agencies, surrounding jurisdictions, etc. Consultant will prepare and distribute **ALL** required CEQA notices for this project (i.e. the Notice of Completion, Notice of Availability, etc.). The City of Costa Mesa will only be responsible for newspaper notices.

Deliverable
Draft IS/MND
And CEQA Notices

TASK 6 —PREPARE RESPONSES TO COMMENTS

Although not required by CEQA, the City's policy is to provide a thorough Responses to Comments document for the IS/MND. The Responses to Comments document is expected to be very detailed and comprehensive. Upon receipt of written comments on the Draft IS/MND from the State Clearinghouse and other parties, Consultant will review all comments. Consultant will prepare written responses to comments that raise environmental issues. These responses will be provided as a separate Responses to Comments document. Upon receipt of the City's comments, Consultant will finalize the responses to comments. Responses to public agency comments will be mailed by Consultant. The scope of services should assume at least 40 hours required to prepare the responses to comments document.

Deliverable
Responses to Comments

TASK 7 – MEETING ATTENDANCE AS NEEDED

In addition to the kick-off meeting, meeting attendance for two other meetings is required.

- Planning Commission public hearing
- City Council public hearing

TENTATIVE PROJECT SCHEDULE

Proposals Due	Wednesday, January 25, 2006
Contract Awarded	with 10 working days
Initial Study/Mitigated Neg Dec sections due	March 2006
Responses to Comments	April 2006
Planning Commission Meetings	April/May 2006
City Council Meetings	May/June 2006

MISCELLANEOUS TOPICS

CEQA documents in the City of Costa Mesa are detailed, public disclosure documents that may oftentimes go above and beyond the minimum requirements of the law. Consultants may sometimes underestimate the budget without understanding the community's high expectations of the contents of an IS/MND. The consultant should keep the following in mind:

- Please exercise some degree of latitude with estimating a realistic project budget that fully realizes the challenges of delivering the IS/MND that will be highly scrutinized.
- Please try to avoid proposing an unrealistic, skeleton budget that may invariably need to be amended later through contract change orders.

- o Please be sure to include reimbursables, printing budget, and any other costs associated with this project. (All documents will be printed by Consultant.)
- o Please include a 10% contingency in the overall budget. The proposed budget should fully anticipate any unusual work activity associated with detailed Responses to Comments, multiple meeting attendance, etc. that would require funding.

CONSULTANT INSURANCE REQUIREMENTS

Consultant shall obtain and maintain during the life of this 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 Dollars (\$1,000,000.00), 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 Dollars (\$1,000,000.00), 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 Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. 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.

The comprehensive general liability insurance 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, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (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."

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.

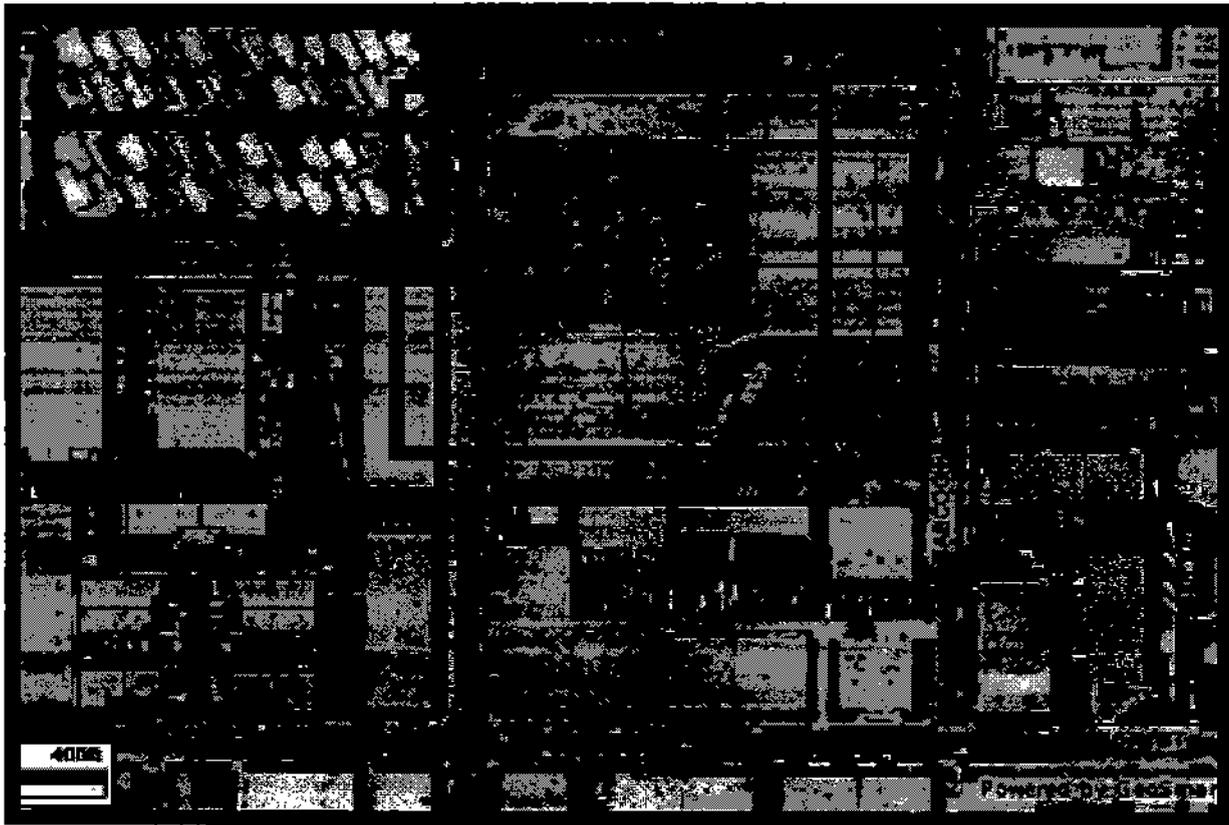
CONTACT:

Claire L. Flynn, AICP
Senior Planner

City of Costa Mesa
77 Fair Drive
P.O. Box 1200
Costa Mesa, CA 92628-1200
(714) 754-5278

Westside Lofts by Nexus Development
1640 Monrovia Avenue

PROJECT SITE



PROPOSED PROJECT

The proposed project is to change the land use designation of a 6.8-acre site at 1640 Monrovia from Light Industry to High Density Residential. This site is located within the proposed Mesa West Bluffs Urban Plan area and formerly served as Eaton Industries headquarters. In addition to the General Plan amendment, the proposed development project will consist of the following:

- Rezone of the property from MG to Planned Development Residential – High Density (PDR-HD).
- Master Plan approval of a high density residential development.
- Vesting Tentative Tract Map for condominium purposes
- Complete demolition of all existing industrial buildings and construction of 135 residential condominiums.
- Residential development to include: 1,000 sq.ft. to 2,600 sq.ft. condos with roof decks and outdoor amenity spaces, modern architectural style for the exteriors, and high-quality fixtures and finishes for the interiors.
- Condominiums maximizing views from balconies/roof decks of the Pacific Ocean, city lights, or the foothills.

LAND USE ANALYSIS

The Eaton buildings are currently vacant and formerly provided approximately 133,000 square feet of industrial building area. In the proposed High Density Residential land use/Planned Development Residential zone, the review/approval of a master plan is required. The Master Plan process would ensure that the residential project, including proposed building setbacks, structure orientation, placement of windows, outdoor amenity spaces, and noise attenuation, would be compatible with adjacent industrial

properties. Since a residential development would only be permitted through an approved Master Plan, staff believes this process provides assurances for a unique residential urban village in the Westside that would be compatible with the surrounding industrial uses. A concept plan is attached for informational purposes only.

TRAFFIC ANALYSIS

A traffic study completed by Austin-Foust concluded that a proposed 136-unit development would not result in significant adverse impacts. The following table is a trip generation summary table of existing and proposed development.

Land Use	AM Peak Hr Trips	PM Peak Hr Trips	Total Avg Daily Trips
<i>Existing Nonconforming Bldg</i> 133,000 sq.ft. of Industrial Uses	123	131	931
<i>Proposed Project</i> 136-unit Condominium Project (20 dwelling units/acre)	91	106	1,108
NET INCREASE			+177

Given that the Eaton buildings are nonconforming in size and that there may be excess traffic capacity available in the traffic analysis zone, the study further concluded that theoretically up to 100 more dwelling units may be accommodated without requiring traffic mitigation.

EXHIBIT B
RESPONSE AND SCOPE OF SERVICES

SERVICE CONTRACT

Date Prepared: February 2, 2006

Project Name: Westside Lofts IS/MND Project No.: COS-O 1

Client: Name: City of Costa Mesa Development Services Department
Address: 77 Fair Drive
Costa Mesa, Ca 92628-1200
Contact: Ms. Claire L. Flynn, AICP, Senior Planner

Planner: Name: TEMPLETON PLANNING GROUP
Address: 1470 Jamboree Road, Suite 200
Newport Beach, CA 92660
Contact: Peter Templeton, Principal

Type of Authorization: _X_ New Contract Contract Extension

Contract Amount: \$43,100 Retainer Amount: \$ _____

RE: PROPOSAL TO PREPARE AN IS/MND FOR THE WESTSIDE LOFTS IN COSTA MESA, CA.

1. Project Summary

The City of Costa Mesa has determined that in order to develop the proposed 135-unit residential development at 1640 Monrovia Avenue where the former Eaton Industries buildings are located, the land use designation must be changed from Light Industry to High Density Residential, and an IS/MND must be prepared. The Westside Lofts project consists of a general plan amendment, zone change, master plan approval, vesting tentative tract map and complete demolition of all existing buildings to allow for the development of 135 residential condominiums with roof decks and outdoor amenity spaces.

2. Scope of Services

The IS/MND will be prepared in conformance with the California Environmental Quality Act (CEQA) CEQA guidelines, and City of Costa Mesa CEQA Procedures. The scope of work will include the following tasks:

Task 1.	Project Initiation	\$300
	This task includes attendance at a kick-off meeting with the applicant's project teams and City staff to discuss the project and scope of work.	

Task 2.	Initial Study	\$5,000
	This task will include working with City staff and applicants to prepare the project description. In addition, all required CEQA forms will be prepared, including Notice of Availability, Initial Study (IS), and distribution list for review and comment by the City of Costa Mesa. The IS/MND will be finalized and distributed by certified mail to all responsible, trustee, and interested agencies, community groups, and individuals.	
Task 3.	Preparation of First Screencheck IS/MND	\$22,000
A.	<u>Purpose and Scope of the Proposed Action</u>	
B.	<u>Project Description</u>	
C.	<u>Discussion of Environmental Evaluation</u>	
D.	<u>Aesthetics</u>	
E.	<u>Air Quality</u>	
F.	<u>Geology and Soils</u>	
G.	<u>Hazards and Hazardous Materials</u>	
H.	<u>Hydrology/Water Quality</u>	
I.	<u>Land Use and Planning</u>	
J.	<u>Noise</u>	
K.	<u>Population and Housing</u>	
L.	<u>Public Services and Utilities</u>	
M.	<u>Recreation</u>	
N.	<u>Transportation/Traffic</u>	
O.	<u>List of Preparers</u>	
P.	<u>Process Documentation (Appendix)</u>	
Q.	<u>List of References</u>	
Task 4.	Prepare Proofcheck Draft IS/MND	\$3,000
Task 5.	Circulation of Draft IS/MND	\$1,800
Task 6.	Prepare Responses to Comments (up to 30 hours)	\$4,500
Task 7.	Meeting Attendance as Needed (Attendance at 1 kick-off meeting and 4 Planning Commission and City Council public hearings.)	\$1,500
Task 8.	Reimbursibles Charges for out-of-pocket expenses for services, equipment and facilities not directly furnished by the Templeton Planning Group, and any unusual items of expense not customarily incurred in our normal operations are computed at cost. Such items include, but are not limited to, printing and binding of reports, drawings and specifications, and photographic processing. These reimbursable costs are estimated to be a maximum of \$5,000 and are included in our estimated budget.	\$5,000
	Total Estimated Budget	\$43,100

Review of the technical studies and preparation of the appropriate CEQA documentation will be completed by Nicole Morse with assistance from Vanessa Ko. Billing rates are as follows:

Peter Templeton, Principal	\$225/hr
Nicole Morse, Director of Environmental Services	\$175/hr
Vanessa Ko, Assistant Project Manager	\$100/hr
Project Planner II	\$85/hr
Project Planner I	\$75/hr

3. Fee Basis and Amount

The Templeton Planning Group and its subconsultants will perform the previous scope of work, for a not to exceed cost of \$43,100. This cost estimate remains valid for 90 days.

4. Subsequent Planning Services

Please note that the budget for the IS/MND is an estimate only, based on our best guess and a maximum level of effort for preparation of Response to Comments. The estimated budget assumes that no additional basic research will be required to respond to comments, that the comments will be directed at the substance and technical adequacy of the IS/MND, and that all of the comments will be compiled by the City and transmitted in one set to the consultant. Modification to the scope of work, budget and time frame may be necessary if comments received from agencies or the general public require increasing the scope of impacts and issues which the Draft IS/MND has addressed. In addition, the reimbursable budget is an estimate only and will be billed at cost.

5. Tentative Project Schedule

Preparation of the Westside Lofts IS/MND will be accomplished through a highly focused and efficient team effort, involving the Templeton Planning Group and the City of Costa Mesa. The following is the tentative project schedule:

Proposal Due	January 25, 2006 Within
Contract Awarded	10 working days March
Initial Study/Mitigated Negative Declaration sections due	2006
Response to Comments	April 2006
Planning Commission Meetings	April/May 2006
City Council Meetings	May/June 2006

Templeton Planning Group will complete the project according to the City's schedule requirements.

6. Insurance Requirements

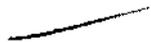
Upon approval of the contract Templeton Planning Group will provide certificates of insurance to the City of Costa Mesa that satisfy the City's insurance coverages and endorsement requirements. The following insurance coverages and shall be obtained and maintained during the life of the contract:

- Comprehensive general liability (policy up to \$1,000,000)
- Automobile liability for vehicles (\$1,000,000)

- Workers' compensation insurance
- Professional errors and omissions liability insurance (\$1,000,000)

ACKNOWLEDGMENT

If the foregoing arrangement is satisfactory, please indicate your approval by executing the original of this contract and return the same to this office, whereupon this document shall become binding on both parties. An additional copy of this contract is enclosed for your records.



Approved and consented to on _____, 2006 by:

EXHIBIT C
FEE SCHEDULE

Contract start date: Monday, February 20, 2006
Invoice Schedule: First invoice within 45 days of contract start date
Final invoice by last City Council hearing, TBD

EXHIBIT D

PROJECT SCHEDULE

TENTATIVE PROJECT SCHEDULE

Proposals Due	Wednesday, January 25, 2006
Contract Awarded	with 10 working days
Initial Study/Mitigated Neg Dec sections due	March 2006
Responses to Comments	April 2006
Planning Commission Meetings	April/May 2006
City Council Meetings	May/June 2006

EXHIBIT E
CITY COUNCIL POLICY 100-5

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;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

- b. Establishing a Drug-Free Awareness Program to inform employees about:
 - 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.