

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
GLENN LUKOS ASSOCIATES, INC.**

THIS AGREEMENT is made and entered into this 22<sup>nd</sup> day of October, 2014 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and GLENN LUKOS ASSOCIATES, Inc., a Corporation ("Consultant").

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide biological services for the restoration, protection and management of vernal pools at Fariview Park, 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 Exhibits "A" and "B" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

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

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the City's Request for Proposal ("RFP"), attached hereto as Exhibit "A," and Consultant's Response to City's RFP (the "Response") 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's Chief Executive Officer ("City CEO") 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, 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.

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

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in the Response (Exhibit "B") attached hereto. Consultant's total compensation shall not exceed Forty Two Thousand, Five Hundred and Ninety Dollars (\$ 42,590.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City 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.

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

### **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 "C," 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 three years, ending on October 22, 2017, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

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

be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

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

## **5.0. INSURANCE**

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

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

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

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

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

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

Glenn Lukos Associates, Inc.  
29 Orchard  
Lake Forest, CA 92630-8300  
Tel: 949-837-0404  
Fax: 949-837-5834  
Attn: Tony Bomkamp

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5291  
Fax: (714) 754-5028  
Attn: Baltazar Mejia

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 agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant 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 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 Project related items as requested by City or its authorized representative, at no additional cost to the City.

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

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

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this

Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

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

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

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

6.20. 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.

**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

[Redacted]  
\_\_\_\_\_  
[Mayor] Officer]

Date: 10/30/14

CONSUL

[Redacted]  
\_\_\_\_\_  
Signature

Date: 10/16/14

Glenn Lukos

Name and Title

[Redacted]  
\_\_\_\_\_  
Social Security or Taxpayer ID Number

ATTEST:

[Redacted] 10/30/14  
\_\_\_\_\_  
City Clerk and ex-officio Clerk  
of the City of Costa Mesa



APPROVED AS TO FORM:

[Redacted]

City Attorney

Date: 10/21/14

APPROVED AS TO INSURANCE:

[Redacted]

Risk Ma

Date: 10/17/14

APPROVED AS TO CONTENT:

[Redacted]

Date: 10-10-14

DEPARTMENTAL

[Redacted]

Date: 10-27-14

**EXHIBIT A**  
**REQUEST FOR PROPOSALS**



# CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

FROM THE DEPARTMENT OF PUBLIC SERVICES/ENGINEERING DIVISION

August 20, 2014

**SUBJECT: RFP for Biological Services for the Restoration, Protection and Management of Vernal Pools at Fairview Park**

Dear Consultant,

The City of Costa Mesa has received a letter from the U.S. Fish and Wildlife Service ("USFWS") (copy attached for reference) regarding the restoration, protection and management of vernal pools in Fairview Park. The City wishes to start implementing restoration and protection measures as soon as possible and is seeking the assistance of qualified biologists to assist with this work. Specifically, the City is looking for a qualified consultant to evaluate the letter from USFWS, develop and recommend options to comply with the City's legal obligations as discussed in the USFWS letter, develop a detailed work plan, coordinate all communications with USFWS on behalf of the City, implement the work plan and provide field monitoring and reporting services.

Please submit a proposal for the requested services and any additional services that may be required to assist the City with the report and its recommendations, and provide a not-to-exceed fee proposal for each principal task as well as a detailed fee schedule.

The principal tasks are:

1. Work with City staff, consultants and agents, and USFWS biologists, to develop and present options to address issues raised by USFWS in July 2014 letter to the City regarding protection of vernal pools and fairy shrimp at Fairview Park.
2. Work with City staff, consultants and agents, and USFWS biologists, to develop a final report with actions for the Park agreed upon by USFWS and the City ("Report").
3. Develop a work plan in coordination with City staff, consultants and agents, and USFWS biologists, to implement the actions set forth in the Report.
4. Obtain any required permits needed to implement the actions set forth in the Report, in particular, permits for the restoration of vernal pools and their delineation.

5. Implement actions in Report, including but not limited to any actions necessary to restore vernal pools. Note that the City will issue separate contracts for the installation of delineation fencing.
6. Coordinate with City staff, City consultants/agents, USFWS biologists, and other appropriate entities as necessary to obtain the necessary permits and implement the actions in the Report.
7. Prepare and submit progress reports (as requested) and final reports to the City and USFWS detailing the actions completed, the success of the restoration efforts, long term management and monitoring actions for the Park, and additional actions needed, if any.

The proposed schedule for this project is:

Proposals Due:	3:00 P.M., Friday, August 29, 2014. Electronic submittals are acceptable.
Consultant Selection:	September 5, 2014
Contract Award:	September 19, 2014
Issue Notice to Proceed:	September 22, 2014

The selected consultant will be required to furnish proper insurance and execute the City's Professional Services Agreement. Copies of these documents are available upon request.

Thank you in advance for your participation and look forward to reviewing your proposal.

Should you need additional information or to discuss this RFP in more detail, please contact me at (714) 754-5291 or at [baltazar.mejia@costamesaca.gov](mailto:baltazar.mejia@costamesaca.gov).

Sincerely,



Baltazar Mejia, P.E., QSD/QSP  
 Parks Project Manager



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
Carlsbad Fish and Wildlife Office  
2177 Salk Avenue, Suite 250  
Carlsbad, California 92008



In Reply Refer To:  
FWS-OR-13B0443-14TA0229

JUL 24 2014

Mr. Baltazar Mejia  
Senior Engineer, Public Services Department  
City of Costa Mesa  
77 Fair Drive  
Costa Mesa, California 92626

Subject: Restoration, Management, and Protection of Vernal Pools within Fairview Park, City of Costa Mesa, Orange County, California

Dear Mr. Mejia:

This letter has been prepared by the U.S. Fish and Wildlife Service (Service) to provide the City of Costa Mesa (City) with information on the actions needed to restore, protect, and manage vernal pool habitat and associated species within the City at Fairview Park, Orange County, California. This information is provided in response to: (1) the installation of a path in Fairview Park that was routed within and adjacent to vernal pools occupied by the federally endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*), (2) your written request received September 4, 2013, for our review of restoration alternatives for vernal pools impacted by the installation of the path (LSA 2013), and (3) recommendations provided by Finium Environmental (2013) following removal of the path. Although the City's primary focus is on restoration of vernal pools impacted by the path, this letter includes actions the Service considers necessary to protect all vernal pool habitat and associated species within Fairview Park. This letter addresses future actions the City may take; it does not address or resolve issues relating to past actions, including the path construction, or the "take"<sup>1</sup> of listed species associated with those past actions. This letter does not constitute authorization for future "take" of listed species.

### Background

San Diego fairy shrimp were first identified in Fairview Park in 1994 (Michael Brandman Associates 1995), 3 years prior to the Federal listing of the species (62 FR 4933). Seven vernal pool basins (numbered 1 through 7) and a "vernal marsh" were delineated in 1995 (Michael Brandman and Associates 1995) (Figure 1). San Diego fairy shrimp have since been identified in all but Basin 7

<sup>1</sup> Section 9 of the Endangered Species Act and associated regulations prohibit the take of endangered and threatened species without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined by the Fish and Wildlife Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering.

(City 2008, Appendix C, Simovich 2005). Three additional vernal pools were observed in Fairview Park, east of Placentia Avenue in 2002 (Glenn Lukos 2002 in LSA 2007). To our knowledge, no surveys for fairy shrimp have been completed in these pools.

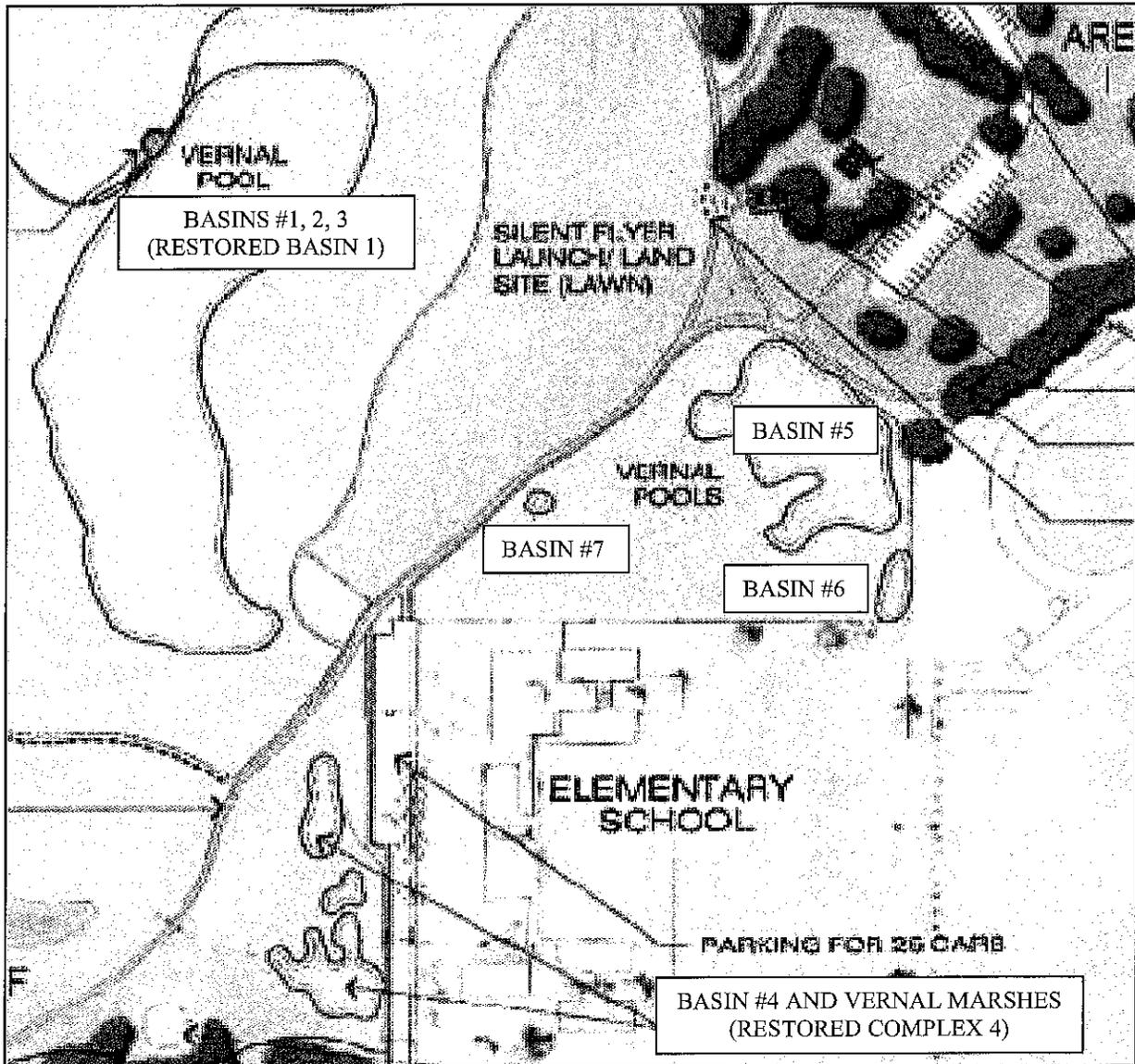


Figure 1. Location of vernal pool basins at Fairview Park.  
Source: Michael Brandman Associated (1995) and Fairview Master Plan (November 2002 revision).  
Pool basins relabeled for clarity.

Restoration projects to improve the quality of habitat for San Diego fairy shrimp and sensitive plant species were completed in Fairview Park as mitigation for impacts to U.S. Army Corps of Engineers jurisdictional waters of the United States (Michael Brandman Associates 2002; Glenn Lukos Associates 2006). As a result of these projects, Basins 1, 2, and 3 were combined (Restored Basin 1), and Basin 4 and the “vernal marsh” were restored into a vernal pool complex (Restored Complex 4).

In above average rainfall years, it is likely that the watersheds of Restored Basin 1 and Restored Complex 4 are connected across the path that artificially separates the watersheds (Figure 2). It is also likely that Basins 5, 6, and 7 are part of a vernal pool complex with a shared hydrological connection during high rainfall years. Monitoring during previous restoration efforts identified the connection between Basins 5 and 6 (Michael Brandman Associates 2002), and the boundary between the watersheds of Basin 5 and 7 was coincident with a row of logs that have since been removed (Finium Environmental 2013).



Figure 2. Vernal pools in Fairview Park during an above average rainfall year (facing south). Paths bisect the basins in several locations, and the fencing is in the water.

Photo source: <http://www.savefairviewpark.org/documents/fpcac-pack-5-29-13.zip>. Labels added.

Fairview Park supports one of the last coastal terrace vernal pools complexes in Orange County (Service 2007). Conservation and management of the San Diego fairy shrimp and its habitat in Fairview Park and other vernal pool complexes in the Los Angeles Basin-Orange Management Area is one of the criteria identified for recovery of the San Diego fairy shrimp in the Service's Recovery Plan for Vernal Pools of Southern California (Service 1998). Vernal pools in Fairview Park also support several plant species that are locally rare (City 2008; Chung 2010).

In the past, the City has supported restoration of the vernal pools and other sensitive habitat in Fairview Park, and the Fairview Park Master Plan (City 2008) includes a commitment that “the pools and basins [in Fairview Park] are to be retained, restored, and protected.” Specific actions in the plan anticipated to benefit the San Diego fairy shrimp include, but are not limited to: (1) restoration of vernal pool habitat; (2) development of a formalized path system to avoid sensitive areas to the extent feasible; (3) installation of educational signage and observation platforms in the vernal pool restoration area; (4) installation of fencing to protect the vernal pools; and (5) cessation of mowing within the vernal pools or, if necessary, mowing only late in the season after annual forbs and grasses have set seed.

We agree that the general measures identified in the Master Plan are appropriate to maintain the vernal pools. We are concerned, however, that some measures have not been implemented and others have been implemented in ways that may have impacted the San Diego fairy shrimp. More specific details are needed to ensure that the San Diego fairy shrimp and its habitat are protected. Activities that may have impacted or have the potential to impact the San Diego fairy shrimp and its habitat at Fairview Park include the following:

Installation of paths and parking areas: A path was installed in late 2013 that may have resulted in direct and indirect impacts to San Diego fairy shrimp, as described in our letter, dated November 14, 2013 (13B0443-14TA0039). While the path has been removed, grading associated with path installation altered the hydrology of the watershed supporting Basins 5 and 6 so that water may not pond to the extent it did historically (Finium Environmental 2013). As a result, fairy shrimp cysts may not hatch to their historical capacities until changes in topography are corrected (Finium Environmental 2013). The portion of the watershed supporting Basin 7 (including the basin area) has been used as a temporary parking area, and logs were placed in the watershed to delineate the parking boundary. A portion of the watershed of Restored Complex 4 was impacted by the installation of permanent parking along Canyon Drive. Grading for the parking area changed the topography so that water now ponds in the parking area (Figure 2).

Improvements to Estancia High School Stadium: The installation of fencing and a field events area impacted a significant portion of the watershed area supporting Basin 6 and altered the hydrology by re-grading the site. The changes in topography may limit the potential for the City to restore the basin within the boundaries of Fairview Park.

Pedestrians, dogs, and bicycles: While substantial resources have been focused on restoring and protecting Restored Basin 1, the unfenced northern end has informal paths leading directly into the basin and allowing bicycle access. Bicycle tracks and paths encroach within the northern end of the basin. Because the fencing was installed only around the restored basin area, the paths leading to the boardwalk are within the watershed of the basin. In January 2011 (an above average rainfall year), it was apparent that several paths and the fence are located in the basin (Figure 2). Restored Complex 4 has multiple paths running through it and shows signs of frequent use by dogs.

Operation of motorized vehicles during the wet season: In Restored Complex 4, deep tire tracks are evident due to motorized vehicle encroachment when the basins were inundated. The deep tracks may have altered the hydrology of the basins by causing water to pool first in the tracks, potentially concentrating fairy shrimp cysts within smaller portions of each basin.

Installation of landscaping and associated irrigation systems: Ornamental landscaping and turf areas border Basins 5 and 6 to the north, south, and east. Irrigation systems installed to support the landscaping are contributing to conversion of the vegetation communities within the watershed where water is now available throughout the year. The perennial water source is supporting wetland species such as mulefat (*Baccharis salicifolia*), curly dock (*Rumex crispus*), and sedges (*Cyperus* sp.) (Finium Environmental 2013). The conversion of the vernal pool habitat to wetland can result in the permanent loss of habitat for San Diego fairy shrimp.

Mowing and pesticide and herbicide application: We have little information regarding the current timing and location of mowing activities or the application of pesticides and herbicides, but these activities have the potential to impact San Diego fairy shrimp and their habitat. Mowing equipment can crush cysts, spread invasive plant species, and cause ruts if mowing is conducted when the ground is damp. Pesticides and herbicides could potentially harm San Diego fairy shrimp cysts and adults.

### **Restoration, protection, and management of vernal pools in Fairview Park**

While accommodating public uses within Fairview Park, it is the City's responsibility to ensure that its actions comply with the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). In consideration of the degraded condition and management needs of the vernal pool habitat within Fairview Park, implementation by the City of the following measures would help ensure that the San Diego fairy shrimp population within the coastal terrace vernal pools at Fairview Park remains viable. Some of these restoration actions can be implemented immediately without further authorization under the Act, but others have the potential to result in take of listed species for which additional authorization under the Act would be required. To ensure that the City's future actions are appropriately authorized under the Act, we recommend that the City coordinate closely with our office to ensure that any incidental take associated with these actions is appropriately exempted under the Act. As indicated above, this letter does not exempt future take of listed species.

The following measures apply to Restored Basin 1, Restored Complex 4, and the vernal pool complex consisting of Basins 5, 6, and 7.

1. Watershed Restoration – Prepare and implement a restoration plan to address damages to the hydrological function of the vernal pool watersheds. The plan should be prepared by a biologist with a minimum of 5 years of experience restoring vernal pools in southern California and should identify actions that are necessary to restore hydrological function to the vernal pools. The plan should be reviewed and approved by the Service prior to implementation. Measures that should be included in the restoration plan include, but are not limited to:
  - a. Corrections to the watershed topography, as necessary, to ensure the basins will pond for a sufficient duration during an average rainfall year to support the life history of the San Diego fairy shrimp.
  - b. Management of the irrigation systems to prevent runoff from entering the watershed of Basins 5, 6, and 7. The City should coordinate with Newport-Mesa Unified School

District to ensure irrigation supporting landscaping at Estancia High School Stadium does not enter Fairview Park. We are available to assist the City with this coordination, as necessary.

- c. Removal of landscaping, turf, and non-vernal pool associated wetland plants (e.g., mulefat, curly dock) that were supported by irrigation systems in the watersheds and replacement with appropriate native vegetation.
  - d. Removal of non-native plant species (e.g., annual grasslands and mustards) if needed to re-establish hydrological function.
  - e. Restoration of native vegetation around the vernal pool basins and along informal and unauthorized paths, as appropriate (e.g., outside the basin area).
  - f. Removal of trash or other debris from the vernal pool watershed.
2. Permanent Protection – Record a conservation easement over the vernal pool basins and watersheds. Consistent with the Fairview Park Master Plan, the conservation easement should provide for the protection of the San Diego fairy shrimp and its habitat while allowing appropriate public access and enjoyment of the park.
  3. Fencing and Paths – The Service generally recommends fencing a sufficiently large habitat buffer (i.e., at least 100 feet from the outer edge of the watershed in most cases) to reduce encroachment by pedestrians and off-road vehicles, trash accumulation and dumping, and other indirect effects of development (Service 2008). A large buffer is necessary to account for natural changes in the basin dimensions over time in response to varying hydrological conditions and to prevent alterations to the watershed that could impact the duration and extent of ponding. To ensure the watersheds in Fairview Park are protected, the fencing should limit entry to the majority of the watershed area. Pets should be kept on leash in the park to prevent entry into fenced areas. Formal paths that will pass through the watershed of vernal pools should be placed on boardwalks, above the water surface elevation of the basins, to minimize changes in hydrology and the introduction of contaminants into the basins. Suggested locations for fencing are provided for discussion purposes (Figure 3).
  4. Public Education – The Service would like to partner with the City to develop educational materials and signs that can highlight the importance of biological resources in Fairview Park. The preservation of remaining coastal terrace pools in the City of Costa Mesa should be considered a source of pride for the City and its citizens. Educational signs, located along primary access routes (e.g., Figure 3), can help to enhance and contribute to the public’s use and enjoyment of the vernal pool area. A “nature path” with stopping points where users can learn more about vernal pools and the plants and animals they support can highlight species that are not readily seen and can maintain a public awareness of the rarity of these biological resources for generations to come.

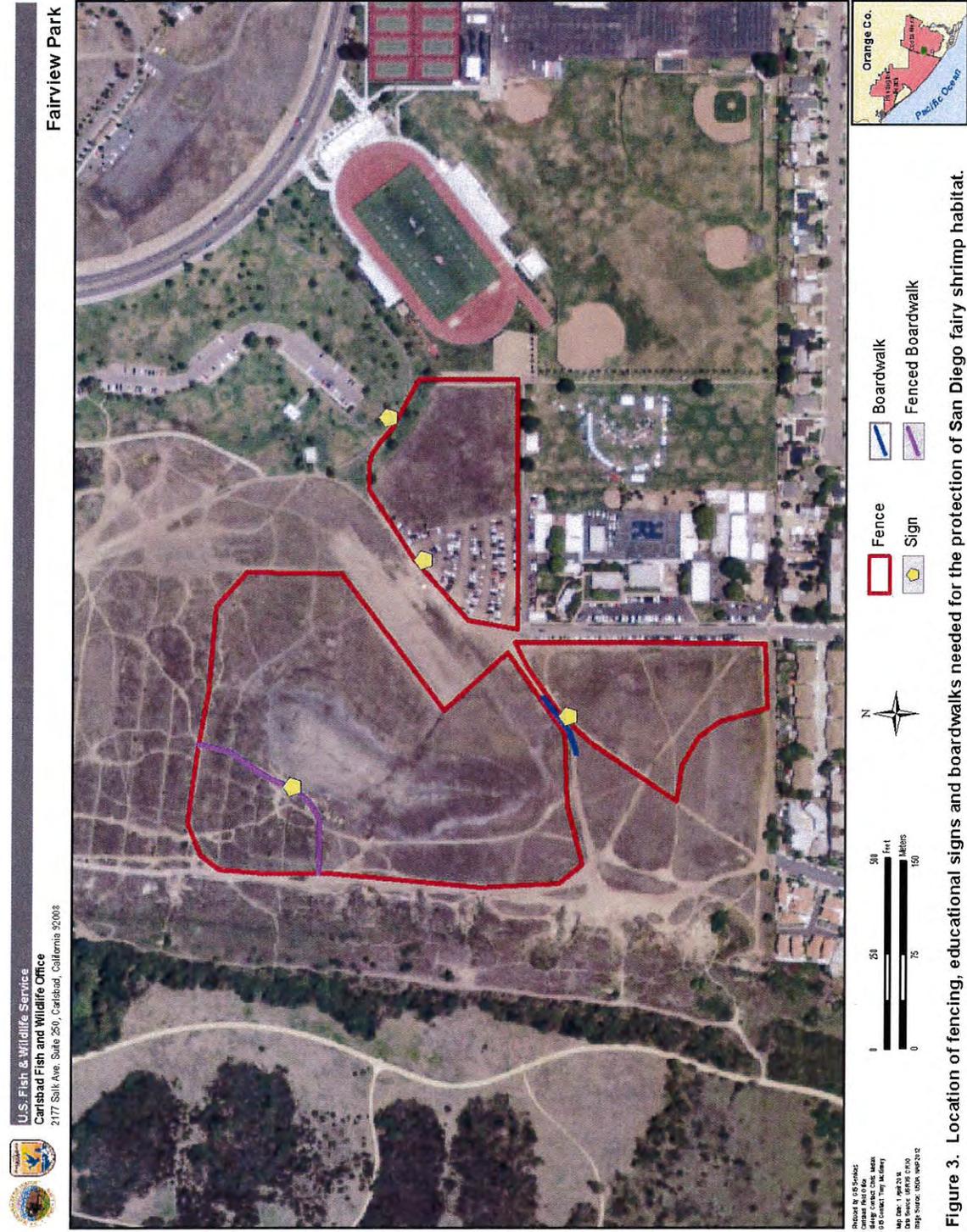


Figure 3. Location of fencing, educational signs and boardwalks needed for the protection of San Diego fairy shrimp habitat.

5. Trash – Provide trash receptacles and pet waste stations in convenient locations to minimize the potential for trash to be discarded in the vernal pool watersheds.
6. Mowing, Weed Control, and Pesticide Use – Mowing should be conducted outside the limits of the vernal pool basins to avoid direct impacts to San Diego fairy shrimp. In addition, we recommend that mowing be restricted within approximately 50 feet of the basin area to avoid restored habitat and sensitive plant species surrounding the basin area. The mowing limits should be periodically reevaluated to compensate for changes in the size and location of the basin area and corresponding zone of sensitive plant species. Please coordinate with the Service regarding use of pesticides and herbicides within the vernal pool watersheds to ensure chemicals harmful to San Diego fairy shrimp are avoided.
7. Employee Education – Provide an on-site education program for current and new employees of the City that will have assigned duties in Fairview Park to review sensitive biological resource areas and the City’s responsibilities for management of these areas.
8. Patrol – Include as part of regular patrol duties, inspection of the fencing surrounding the watersheds and reporting of any damage to the fences or signs of encroachment within the fenced boundary.
9. Biological Monitoring – Regular biological monitoring is necessary to determine the efficacy of management measures to preserve and protect the San Diego fairy shrimp. Biological monitoring should include:
  - a. Annual watershed inspection – A biologist who has experience with San Diego fairy shrimp and its habitat should prepare a brief summary of the status of the habitat and a list of any additional management actions needed to protect and/or restore damages to the habitat.
  - b. Surveys for fairy shrimp – The City should conduct periodic surveys once every 5 years when there is sufficient rainfall to document the status of the San Diego fairy shrimp in each of the pools in Fairview Park.
10. Adaptive Management – Review the effectiveness of management actions annually to determine if additional measures are needed to protect San Diego fairy shrimp from harm. Cable wire fencing is proposed in the Fairview Park Master Plan to protect the pool basins. If this type of fencing is not adequate to prevent the public from regularly entering the basin areas, additional fencing or a different type of fencing may be required. If the degradation of the pools has already impacted the viability of the San Diego fairy shrimp, additional inoculation of the pools with cysts may be necessary.

Three additional vernal pool areas, located east of Placentia Avenue, require additional surveys to determine if San Diego fairy shrimp and/or sensitive vernal plant species are present. We recommend the City delineate the watershed of the three pools in the near future and avoid impacts to the watershed areas until protocol surveys (Service 1996) can be completed. Positive survey results may require changes in management actions to address

San Diego fairy shrimp. The City should coordinate adaptive management with the Service prior to implementation.

11. Fairview Park Master Plan Update – Include in an update to the Fairview Park Master Plan specific and ongoing management actions that will be implemented to ensure high quality habitat for San Diego fairy shrimp is maintained and that the species is protected.

These are the measures that are needed to protect San Diego fairy shrimp and their habitat in Fairview Park and are not intended to offset the damage caused by path construction. Issues relating to take that may have been caused by path construction remain under investigation by the Service at this time and will be addressed separately in the future.

We look forward to meeting with the City to further refine the details and timing of restoration, protection, and management actions. Should you have any questions regarding this letter, please contact Christine Medak of this office at 760-431-9440, extension 298.

Sincerely,



Karen A. Goebel  
Assistant Field Supervisor

cc:  
Marilyn Fluharty, California Department of Fish and Wildlife

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Mr. Baltazar Mejia (FWS-OR-13B0443-14TA0229)

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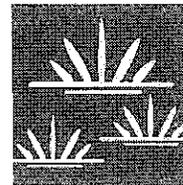
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**EXHIBIT B  
CONSULTANT'S PROPOSAL**

# GLENN LUKOS ASSOCIATES

Regulatory Services



October 1, 2014

Baltazar Mejia  
Parks Project Manager  
City of Costa Mesa  
77 Fair Drive  
Costa Mesa, California 92628-1200

**SUBJECT:** Proposal for Biological Services for the Restoration, Protection and Management of Vernal Pools at Fairview Park, Costa Mesa, California.

Dear Mr. Baltazar:

Glenn Lukos Associates is pleased to submit this proposal for provision of biological and regulatory consulting services, specifically for performance of wet- and dry-season fairy shrimp surveys, coordination with City staff, consultants and agents, and U.S. Fish and Wildlife Service (USFWS) biologists in order to address the principle tasks set forth in your request for proposal dated August 20, 2014. This proposal addresses what is envisioned as "Phase I" and includes the tasks outline below and set forth in more detail in the attached Scope of Work. Phase II would include implementation of the measures ultimately agreed to by the City and USFWS and would be addressed in a separate proposal. Tasks associated with Phase I include:

- Conduct dry season and wet season protocol surveys to determine the presence/absence of listed fairy shrimp in the portion of the Project that occurs east of Placentia Avenue.
- Work with City staff, consultants and agents, and USFWS biologists, to develop and present options to address issues raised by USFWS in July 2014 letter ("Letter") to the City regarding protection of vernal pools and fairy shrimp at Fairview Park.
- Work with City staff consultants and agents, and USFWS biologists, to develop a final report with actions for the Park agreed upon by USFWS and the City ("Report").
- Develop a work plan in coordination with City staff, consultants and agents, and USFWS biologists, to implement the actions set forth in the Report.

Phase I also includes two optional tasks. The first optional task is preparation of a low-effect HCP or other mechanism that would provide the necessary authorizations for conducting Phase II. This task will only be implemented if it is determined necessary during coordination with USFWS and only with written authorization from the City. A second

Baltazar Mejia  
Parks Project Manager  
City of Costa Mesa  
October 1, 2014  
Page 2

optional "Contingency" task has been added that would only be used for items not set forth in the Scope of Work detailed below and only as authorized by the City.

The attached Scope of Work sets forth GLA's approach to addressing USFWS's concerns in a manner that is cost-effective for the City while also ensuring biological integrity of the pools. Mr. Tony Bomkamp will oversee the project and will work closely with GLA biologist Kevin Livergood, who will conduct necessary fairy shrimp surveys. Mr. Livergood holds a valid Section 10(a)(1)(A) Permit for conducting surveys for listed fairy shrimp in southern California (TE-172368-1).

Mr. Bomkamp has extensive experience with the Fairview Park Vernal Pools, having conducted the initial jurisdictional delineation and characterization in 1995 and identified the San Diego fairy shrimp within the existing portion of Pool 1 (prior to restoration) as well as Basins 5 and 6 under Permit TE-825679-1 (currently inactive). Mr. Bomkamp designed and implemented restoration effort for Pool 1 in two phases. Phase 1 was mitigation for The Irvine Company's University Research Park and Phase 2 was for mitigation associated with construction of the nearby IKEA store. During Phase 2, Restored Complex 4 was graded and restored. All of the habitat restoration implemented by Mr. Bomkamp, which included five years of monitoring and maintenance for each phase was successfully completed and accepted by the U.S. Army Corps of Engineers (Corps), California Department of Fish and Wildlife (CDFW) and the Regional Water Quality Control Board (RWQCB), as appropriate. More recently, in October 2012, Mr. Bomkamp implemented successful restoration of the path that formerly bisected Pool 1. Mr. Bomkamp has also been involved in developing aspects of the Fairview Park Master Plan. In addition to his duties as a biological consultant, Mr. Bomkamp also serves as part-time faculty at California State University, Fullerton (CSUF), for the graduate Environmental Studies Program, teaching courses on "Wetlands" and "Endangered Habitats of Southern California" as well as a graduate seminar on "Vernal Pools" for the Biology Department at CSUF.

Overall, Mr. Bomkamp has 19 years of vernal pool restoration experience, having implemented vernal pool restoration programs (in addition to those at Fairview Park between 1997 and 2010) at Chollas Heights in San Diego (1995-1996), at the San Diego Spectrum in Kearny Mesa (1999-2005), at Rancho Diamante in Hemet (2005), at Clayton Ranch in Murrieta (2011-ongoing), at U.C. Irvine (1997-1998), and for the I-215 widening project in western Riverside County (2013-ongoing). Mr. Bomkamp has also overseen a variety of successful seasonal pond restoration programs for special-status species such as for the western spadefoot toad (East Orange Specific Plan between 2005 and 2011).

Baltazar Mejia  
Parks Project Manager  
City of Costa Mesa  
October 1, 2014  
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## **COSTS**

The proposed fee for performance of Phase I tasks is \$42,590. The costs of certain tasks within each phase are directly related to unknown weather conditions, agency decisions and adopted strategies for implementation. As an advocate for our Clients, GLA will conduct surveys and provide Project alternatives in the most cost-effective manner possible. While some project costs described in this proposal are inclusive of maximum survey or permitting scenarios, it is GLA's intent to provide these services in the most cost-effective manner and will minimize survey scenarios and permitting efforts wherever possible.

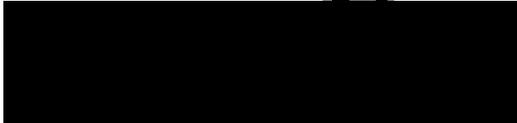
## **SCHEDULE**

Work on Phase I tasks can begin immediately upon receipt of an executed contract or Purchase Order and receipt of notice to proceed from the City of Costa Mesa.

If you have any questions regarding this proposal, please contact Glenn Lukos at (949) 837-0404.

Sincerely,

GLENN LUKOS ASSOCIATES, INC.



Glenn C. Lukos  
President

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**SCOPE OF WORK  
RESTORATION, PROTECTION AND MANAGEMENT  
OF VERNAL POOLS AT FAIRVIEW PARK  
COSTA MESA, CALIFORNIA**

**PHASE I: SITE SURVEYS AND COORDINATION WITH THE CITY AND USFWS**

**Task I. Conduct Dry Season Fairy Shrimp Survey (2014)**

A biologist holding a valid 10(a)(1)(A) permit from USFWS will perform a dry season survey for fairy shrimp cysts in accordance with current protocol adopted by the USFWS. This scope of work allows for a maximum of three seasonal pools to be surveyed, as previously identified by LSA in the 2013 restoration alternatives report.

Ten soils samples will be collected from each pool and processed to determine the presence/absence of fairy shrimp cysts. The soil samples will be collected by a GLA biologist, and then provided to a biologist approved by USFWS for processing. Based on cyst morphology, any cysts detected through soil processing will be identified to Genus; which will identify whether cysts of the listed Riverside fairy shrimp are present (Genus *Streptocephalus*) versus cysts of the Genus *Branchinecta* (the non-listed versatile fairy shrimp and/or the listed San Diego fairy shrimp). Following the completion of the dry season survey, a report will be submitted to the USFWS to document the results of focused surveys. This report must be submitted to USFWS within 90 days of completion of surveys as a requirement of the survey protocol and of our permit that allows us to conduct such surveys.

**Task II. Conduct Wet Season Fairy Shrimp Survey (2014-2015)**

A biologist holding a valid 10(a)(1)(A) permit will conduct a wet season survey to complete the two-survey protocol for confirming the presence/absence of listed fairy shrimp. USFWS survey guidelines require that ponding features be monitored and sampled from the start of the first ponding event of the season and sampled every 14 days until the feature is no longer ponded, or until the features have surpassed 120 days of continuous ponding. If the depressions dry up and subsequently pond again during the wet season, surveys must be re-initiated following the same protocol. This task allows for a maximum of ten site visits to sample the ponded depressions. If additional survey visits are necessary due to unpredictably high rainfall causing longer than normal ponding, the existing contract can be amended to allow for additional visits.

Mature fairy shrimp detected in the ponded depressions will be collected and identified to species. Following the completion of the wet season survey, a report will be prepared to document the results of focused surveys. This report must be submitted to USFWS within 90 days of completion of surveys as a requirement of the survey protocol and of our permit that allows us to conduct such surveys.

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As noted, if a listed species is identified, surveys can be halted for the pool where it was detected thus, eliminating the need for ongoing surveys for said feature and reducing overall wet season sampling costs.

**Task III. Work with City staff, consultants and agents, and USFWS biologists to develop and present options to address issues raised by USFWS**

As noted, GLA Biologists have conducted substantial work at Fairview Park beginning in 1995, including biological surveys, successful restoration of Pool 1 in two phases, restoration of Restored Complex 4. As such, GLA has extensive knowledge of the pools, their watersheds (and watershed characteristics), and the biological resources associated with the pools. Many of the concerns raised by USFWS can be easily addressed through additional fencing (e.g., at the north end of Pool 1 as well as fencing or barricades to keep vehicles out of the pools). Similarly, issues such as mowing, over-irrigation, and chemical use in the area of Basins 5 and 6 can also be addressed through modification of current landscaping practices. Other concerns will require more analysis to ensure protection of the biological resources while maintaining public access and use. GLA will work with City Staff, Consultants, Agents and USFWS to develop reasonable options to address the issues raised by USFWS.

Of particular concern will be:

- Fencing scheme proposed on Figure 3 of the USFWS July 24, 2014 letter (“Letter”); and
- Buffer requirements proposed on page 6 of the “Letter”.

It is GLA’s opinion that USFWS does not fully understand the functioning of the watersheds for the pools and that because of the very flat character of the watershed areas and the character of the clay soils, it would be nearly impossible to adversely affect the watersheds of the pools. Nevertheless, GLA will work cooperatively with USFWS to develop the best outcome that balances the uses within the park and the protection of the biological resources, specifically for the San Diego fairy shrimp. The options that are ultimately determined to provide that balance that are acceptable to the City and USFWS will be documented in a final report.

**Task IV. Develop a Final Report with Actions for The park Agreed Upon By USFWS and the City (“Report”)**

GLA will prepare a final report of findings (“Report”) that will document the actions (remedial measures) that are ultimately selected from the options developed in Task III as acceptable to both the City and USFWS. Specifically, the Report will address each of the issues raised on pages 4 and 5 of the “Letter” including: installation of paths and parking areas; improvements to Estancia High School stadium; pedestrians, dogs and bicycles; operation of motorized vehicles during the wet season; installation of landscaping and irrigation systems; and mowing, pesticide, and herbicide use.

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As noted above, many of these issues can be easily addressed. Others will require negotiations with the USFWS and could require additional habitat restoration. For example, potential impacts to Basin 6 may require restoration/re-creation of the pool in a new location (though close to the original pool). The "Report" will serve as the foundation document for the "Work Plan" that will provide specific details necessary to implement the actions set forth in the "Report".

**Task V. Develop "Work Plan" to Implement Actions set Forth in the "Report"**

Using the "Report" as a foundation, GLA will prepare a "Work Plan" that provides the necessary details, specifications, and other necessary actions to ensure that all concerns raised by USFWS are fully addressed. It is anticipated that the "Work Plan" would be developed cooperatively with City Staff, other City consultants and/or agents, given that many of the expected tasks will require coordination with landscape personnel, engineers, and or City planning staff. Such issues as additional protective fencing and barriers will need to be addressed as well as landscaping practices. It also may be necessary to modify landscaping and conduct turf removal in the vicinity of Basin 5, remove non-native plants in the vicinity of the pools or within their watersheds, restore areas of native habitat adjacent to the pools or within their watersheds, and establish protocols for trash and debris removal all as outlined on pages 5 and 6 of the "Letter". Implementation of these actions is expected to require coordination with various City departments and potentially other consultants.

On Page 5 of the "Letter" under "1. Watershed Restoration", USFWS requires preparation of a restoration plan that addresses damages to the hydrological function of the vernal pool watersheds. USFWS notes that the plan should be prepared by a biologist with a minimum of five years of experience restoring vernal pools in southern California. As noted, Mr. Bomkamp has 19 years of such experience including all vernal pool restoration work for the Fairview Park Pools.

Based on the requirements on pages 5 and 6 of the "Letter", Mr. Bomkamp will include a restoration component within the "Work Plan" that will satisfy all of the requirements that are ultimately determined to be acceptable to the City and USFWS as set forth in the "Report". It is important to note, that GLA has prepared two previous vernal pool restoration plans for Fairview Park that have been approved by the Resource Agencies. To the extent feasible, GLA will utilize the texts of previous restoration plans to reduce costs.

Page 8 of the "Letter" indicates the need for "Adaptive Management" for the pools to ensure long-term protection. The "Work Plan" will include a section that includes recommendations for actions that would be implemented to meet this concern of USFWS. Please note, that GLA has prepared a variety of Adaptive Management Plans for a variety of wetland ecosystems and is very familiar with the scientific literature associated with this discipline.

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**Task VI. As-Needed: Obtain Any Necessary Permits Required to Implement Actions Set Forth in the "Report" and "Work Plan"**

On August 27, 2014, Mr. Bomkamp had a telephone conversation with Ms. Christine Medak of USFWS to discuss the various options for authorizing potential take of the San Diego fairy shrimp associated with the restoration and other remedial actions that will be identified in the "Work Plan". Ms. Medak indicated that based on internal discussions at USFWS, it is most likely that a "Low-Effect" Habitat Conservation Plan (HCP) will be required by USFWS. Other options would be for the a Section 7 Consultation with the Army Corps of Engineers, which in this case is not a likely scenario. If it becomes necessary to apply for additional permits in order to proceed with the agreed upon restoration program ("Work Plan"), then the expanded permitting effort would be covered by this task. This task will only commence upon written authorization from the City.

**Task VII. As Needed Contingency**

A Contingency Fund of \$5,000 will be established to cover unforeseen tasks associated with Phase I that are not specified in this Scope of Services. This fund is to be used on an As Needed Basis and is intended for use on out of scope biological services provided in support of the Fairview Park Vernal Pool restoration, protection and management program and only upon written authorization from the City.

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## DIRECT EXPENSES

GLA's direct expenses shall be those costs incurred directly for the CLIENT's project, including, but not limited to, laboratory tests and analyses, retention and management of technical consultants, printing, and binding charges. Reimbursement for these expenses shall be on the basis of actual charges when furnished by GLA. An administrative charge of 15% shall be applied to all direct expense charges. The table below has been developed to aid us in estimating the total cost of the proposed work and is provided for your information only. Unless otherwise arranged with the client, the cost of each task is not meant to be precise and we may find it necessary to shift costs between tasks as the work proceeds.

TASK	TOTAL COSTS
<b>PHASE I: SURVEYS &amp; PLANNING</b>	
I. Dry Season Fairy Shrimp Survey	\$5,740
II. Wet Season Fairy Shrimp Survey	\$9,700
III. Work with City & USFWS to Develop Options	\$5,420
IV. Work with City & USFWS to Develop Report	\$4,570
V. Work with City & USFWS to Prepare Plan	\$6,770
VI. (As Needed) Obtain Permits	\$5,390
VII. (As Needed) Contingency	\$5,000
<b>TOTAL</b>	<b>\$42,590</b>

**EXHIBIT C**  
**PROJECT SCHEDULE**

**MEJIA, BALTAZAR**

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**From:** Tony Bomkamp <tbomkamp@wetlandpermitting.com>  
**Sent:** Monday, September 29, 2014 11:33 AM  
**To:** MEJIA, BALTAZAR  
**Subject:** RE: Fairview Park Vernal Pool Restoration - Preliminary Schedule

Bart, The first five tasks appear fine. The start date will depend on how we obtain "take" authorization but what you have proposed seems quite realistic, providing plenty of time. Repair of the path/watershed could be done in February, but would depend on the rain. It could be pushed back a month or two if it is too wet to work. I do think that the Fall 2015 and Spring 2016 are where we will end up.

We do have the 15-day notice that would go to USFWS for the dry-season fairy shrimp surveys ready to go...Shall we transmit to the Service so we can be ready to go as soon as we have a NTP?

Tony

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**From:** MEJIA, BALTAZAR [mailto:BALTAZAR.MEJIA@costamesaca.gov]  
**Sent:** Monday, September 29, 2014 11:03 AM  
**To:** tbomkamp@wetlandpermitting.com  
**Subject:** Fairview Park Vernal Pool Restoration - Preliminary Schedule

Hi Tony,

Is this a realistic, not too conservative schedule?

<u>Task</u>	<u>Completion Date</u>
1. Award Contract:	October 10, 2014
2. NTP/start work:	October 13, 2014
3. Task 1 (Meet with City and USFWS to Develop Options):	November 14, 2014
4. Task 2 (Develop Report):	December 12, 2014
5. Task 3 (Prepare Plan):	January 16, 2015
6. Submit B-12 for restoration work and Bio Monitoring:	January 30, 2015
7. Start Phase I work (watershed restoration and grading):	February 27, 2015
8. Start Vernal Pool restoration:	Fall 2015
9. Start Monitoring Program:	Spring 2016

Baltazar Mejia, P.E., QSD/QSP  
Senior Engineer  
City of Costa Mesa  
714-754-5291  
[Baltazar.mejia@costamesaca.gov](mailto:Baltazar.mejia@costamesaca.gov)

**EXHIBIT D**  
**CERTIFICATES OF INSURANCE**



## DESCRIPTIONS (Continued from Page 1)

attached WC040306 0484 attached.

"Should the policies be cancelled before the expiration date, Hub International Insurance Services Inc. (Hub), independent of any rights which may be afforded within the policies to the certificate holder named below, will provide to such certificate holder notice of such cancellation within thirty (30) days of the cancellation date, except in the event the cancellation is due to non-payment of premium, in which case Hub will provide to such certificate holder notice of such cancellation within ten (10) days of the cancellation date."



**Starr Indemnity & Liability Company**

Dallas, TX 1-866-619-2522

## **Primary and Non-contributory, Additional Insured and Waiver of Subrogation**

**Policy Number: SISIEIL70036014**

**Effective Date: 03/31/2014 at 12:01 A.M.**

**Named Insured: Glenn Lukos Associates Inc**

This endorsement modifies the insurance coverage form(s) listed below that have been purchased by you and evidenced as such on the Declarations page. Please read the endorsement and respective policy(ies) carefully.

Commercial General Liability Coverage Form  
Owners and Contractors Protective Liability Coverage form  
Products/Completed Operations Liability Coverage Form  
Contractors Pollution Liability Coverage Form  
Professional Liability Coverage Form  
Site Pollution Liability Coverage Form

### **SCHEDULE**

All as required by written, signed or executed contract.

- A. SECTION II - WHO IS AN INSURED** is amended to include as an insured the person or organization shown in the schedule of this endorsement, but only with respect to liability arising out of "your work" for that insured by or for you.
- B.** As respects additional insureds as defined above, this insurance also applies to "bodily injury" or "property damage" arising out of your negligence when the following written contract requirements are applicable:
  1. Coverage available under this coverage part shall apply as primary insurance. Any other insurance available to these additional insured's shall apply as excess and not contribute as primary to the insurance afforded by this endorsement.
  2. We waive any right of recovery we may have against these additional insured's because of payments we make for injury or damage arising out of "your work" done under a written contract with the additional insured.
  3. The term insured is used separately and not collectively, but the inclusion of more than one insured shall not increase the limits or coverage provided by this insurance.

Insureds and Agents are advised that certificates of insurance should be used only to provide evidence of insurance in lieu of an actual copy of the applicable insurance policy. Certificates should not be used to amend, expand or otherwise alter the terms of the actual policy.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Signed for STARR INDEMNITY & LIABILITY COMPANY

Charles H. Dangelo, President

Honora M. Keane, General Counsel

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## AUTO COVERAGE PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>A. BLANKET ADDITIONAL INSURED</li> <li>B. EMPLOYEE HIRED AUTO</li> <li>C. EMPLOYEES AS INSURED</li> <li>D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</li> <li>E. TRAILERS – INCREASED LOAD CAPACITY</li> <li>F. HIRED AUTO PHYSICAL DAMAGE</li> <li>G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</li> </ul> | <ul style="list-style-type: none"> <li>H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT</li> <li>I. WAIVER OF DEDUCTIBLE – GLASS</li> <li>J. PERSONAL EFFECTS</li> <li>K. AIRBAGS</li> <li>L. AUTO LOAN LEASE GAP</li> <li>M. BLANKET WAIVER OF SUBROGATION</li> </ul> |
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→ A. BLANKET ADDITIONAL INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of SECTION II – LIABILITY COVERAGE:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

B. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph A.1., **Who Is An Insured**, of SECTION II – LIABILITY COVERAGE:

An "employee" of yours is an "insured" while operating a covered "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while

performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., **Other Insurance**, of SECTION IV – BUSINESS AUTO CONDITIONS:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

C. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of SECTION II – LIABILITY COVERAGE:



**K. AIRBAGS**

The following is added to Paragraph B.3., Exclusions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

**L. AUTO LOAN LEASE GAP**

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

**Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles**

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

- (1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto"; and

(2) Any:

- (a) Overdue lease or loan payments at the time of the "loss";
- (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- (c) Security deposits not returned by the lessor;
- (d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
- (e) Carry-over balances from previous loans or leases.

**M. BLANKET WAIVER OF SUBROGATION** ←

The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – BUSINESS AUTO CONDITIONS:

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

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**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT—  
CALIFORNIA**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 0 % of the California workers' compensation premium otherwise due on such remuneration.

**Schedule**

**Person or Organization  
WHEN REQUIRED BY A  
WRITTEN CONTRACT  
Pol#WC969783202**

**Job Description  
WETLAND AND WATER RELATED PERMITTING**

**EXHIBIT E**

**CITY COUNCIL POLICY 100-5**

<b>SUBJECT</b>	<b>POLICY NUMBER</b>	<b>EFFECTIVE DATE</b>	<b>PAGE</b>
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.