

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
ENDEMIC ENVIRONMENTAL SERVICES**

THIS AGREEMENT is made and entered into this 4<sup>th</sup> day of January, 2016 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and ENDEMIC ENVIRONMENTAL SERVICES, a California Corporation ("Consultant").

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide Fairview Park Wetlands and Native Habitat biological monitoring services, as more fully described herein; and

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

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (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;

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- (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 Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed Thirty Eight Thousand Four Hundred and Forty Dollars (\$38,440.00).

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 "D," 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 Two (2) years, ending on January 31, 2018, 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:

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- (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 "E" 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:

Endemic Environmental Services  
P.O. Box 2363  
Huntington Beach, CA 92647  
Tel: (714) 393-6249  
Fax: \_\_\_\_\_  
Attn: Barry Nerhus

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5303  
Fax: (714) 754-5028  
Attn: Robert Staples

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "F" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this 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  
\_\_\_\_\_  
Chief Executive Officer

Date: 2/8/16

CONSULTANT  
REDACTED

REDACTED  
\_\_\_\_\_  
Signature

Date: 14 Jan 2016

Barry Nerhus President

Name and Title  
REDACTED

Social Security or Taxpayer ID Number

ATTEST:

REDACTED



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

APPROVED AS TO FORM:

REDACTED

City Attorney  
APPROVED AS TO INSURANCE:

Date: 01/11/16

REDACTED

Risk Management

Date: 1/8/16

APPROVED AS TO CONTENT:  
REDACTED

REDACTED

Project Manager

Date: 12/16/15

DEPARTMENT HEAD APPROVAL

REDACTED

Ernesto Munoz, Director of Public Services

Date: 1.19.16

FINANCE DIRECTOR

REDACTED

Stephen Dunivent, Interim Finance Director

Date: 1.28.16

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



November 10, 2015

**SUBJECT: REQUEST FOR PROPOSAL (RFP)-FAIRVIEW PARK WETLANDS AND NATIVE HABITAT BIOLOGICAL MONITORING SERVICES, PHASE II, YEAR FOUR**

Dear Consultant:

The City of Costa Mesa is interested in receiving proposals for the services of a qualified consultant to perform biological maintenance and monitoring services for the recently completed Fairview Park Wetlands and Riparian Habitat Project located at 2525 Placentia Avenue, Costa Mesa, CA (Attachment A).

**I. INTRODUCTION**

The City of Costa Mesa has completed three years of native habitat maintenance and monitoring for the Fairview Park Wetlands and Riparian Habitat Project. Project elements include approximately 17 acres of native habitat plantings, irrigation, wetland ponds, and multipurpose trails. Habitat includes coastal sage scrub, native grasslands, mulefat, and wetland vegetation. The maintenance and monitoring period for the establishment of the native habitat began in December 2012.

**A. General Goals**

The City of Costa Mesa is seeking a consultant with a strong background in biological monitoring and native habitat establishment. The successful consultant/contractor will be responsible for providing quarterly biological reports and an annual report to Orange County Transportation Authority (OCTA) and other regulatory agencies (Attachment B). The contract period will cover January 2016-January 2017.

**B. Minimum Consultant Qualifications**

The key project staff, furnished by the consultant and sub-consultants, must have at least three years prior experience on similar types of projects. All consultants responding to this Request for Proposals (RFP) will be evaluated on the basis of their expertise, prior experience on similar projects, demonstrated competence, ability to meet the project schedule, adequate staffing, and understanding of the project, and responsiveness to the needs and concerns of the City of Costa Mesa.

## **II. CONTENT OF PROPOSAL**

In order to maintain uniformity with all proposals furnished by consultants, the proposals shall include the following:

- A. A statement of project understanding containing any suggestions to improve or expedite the project or special concerns of which the City should be made aware. The project approach shall contain clarifications or additional scope of work that you feel are necessary for the successful completion of the project.
- B. A list of similar projects that your firm has completed within the last five years. Information should include: project description, agency or client name, along with the person to contact and the telephone number(s), year completed, and project cost.
- C. Fee proposal.
- D. Add a \$15,000 allowance for wildlife mapping and cowbird trapping study.

**Please submit three copies of the project proposal by November 30, 2015, 5:00 p.m. to:**

**Robert Staples, Contract Administrator  
City of Costa Mesa  
Public Services Department  
77 Fair Drive  
Costa Mesa, CA 92628**

**Contact via cell, 818.388.0564 for questions regarding this RFP.**

## **III. PROFESSIONAL SERVICES AGREEMENT**

- A. A sample of the required Professional Services Agreement is enclosed for your information (Attachment C). The RFP and the consultant's proposal will be attached to and become part of the executed agreement as exhibits.
- B. No reduction of professional services, as stated in both the City's RFP and the consultant's submitted proposal, will be allowed.

## **IV. INSURANCE REQUIREMENTS**

A certificate of insurance is enclosed for your reference (Attachment D). Please refer to the sample agreement for the necessary amounts of general liability insurance, automotive, worker's compensation, and professional liability insurance. The appropriate endorsements are also shown within the sample contract agreement.

## **V. SCOPE OF CONSULTANT SERVICES**

### **A. Project Analysis and Review:**

Analyze the project, perform field review and investigations, evaluate existing conditions, research existing plans and records, and meet with City staff to define the detailed project scope and objectives. Meet with City staff during the progress of the project, for appropriate guidance and coordination.

### **Deliverables:**

1. Quarterly Biological reports for all restored habitat in the 17 acres-hardcopy and electronic.
2. Quarterly photographic records.
3. Annual Biological Reports-hardcopy and electronic.
4. Consultation with maintenance contractor and city staff on a monthly basis.

#### **VI. CITY RESPONSIBILITIES**

The City of Costa Mesa will be responsible for providing all available maps, plans, reports, and records on file.

#### **VII. ASSESSMENT OF WORK EFFORT PRIOR TO SUBMITTING REQUEST FOR PROPOSALS**

Each consultant must inform themselves fully of the conditions relating to the project and the employment of labor thereon. Failure to do so will not relieve a successful consultant engineer of the obligations to carry out the provisions of the contract.

#### **VIII. RIGHT TO REJECT ALL PROPOSALS**

- A. The City of Costa Mesa reserves the right to reject any or all proposals submitted, and/or to delete any portion(s) of the submitted proposal. No representation is made hereby that any contract will be awarded pursuant to this RFP or otherwise.
- B. All costs incurred in the preparation of the proposal, the submission of additional information, and/or any aspect of a proposal, prior to award of a written contract will be borne by the respondent. The City will provide only the staff assistance and documentation specifically referred to herein and will not be responsible for any other cost or obligation of any kind, which may be incurred by the respondent. All proposals and documents submitted to the City of Costa Mesa become the City's property for its own use as deemed necessary.

#### **IX. SUMMARY**

Your participation is greatly appreciated by the City. It is the intent of this RFP to establish the minimum consultant services required by the City. To assist in your preparation, this RFP was categorized into sections stating the specific requirements of the City. It is the intent of the City to select a consultant and award a contract. All insurance documents must be submitted and approved prior to the award of the contract.

Attachments:      Attachment A-Fairview Park Master Plan-Project Site  
                         Attachment B-Mitigation Success Criteria  
                         Attachment C-Sample Professional Services Agreement  
                         Attachment D-Sample Certificate of Insurance



# ATTACHMENT B

CITY OF COSTA MESA  
 FAIRVIEW PARK WETLANDS AND RIPARIAN HABITAT PROJECT  
 RESTORATION PLAN

## CITY OF COSTA MESA FAIRVIEW PARK WETLANDS AND RIPARIAN HABITAT PROJECT RESTORATION PLAN

NOVEMBER 3, 2010

### LAND OWNERSHIP AND LAND MANAGEMENT

Fairview Park is a 208-acre public park owned and maintained by the City of Costa Mesa. The property was acquired from the County of Orange in 1986 (Attachment A). Improvements and restoration of the park are guided by the Fairview Park Master Plan approved by the Costa Mesa City Council in 1998 (Attachment B).

### PROPERTY ANALYSIS RECORD

*PAR Budget Table-Fairview Park Wetlands and Riparian Habitat Project*

Project Element	Unit Price	Unit of Measure	Quantity	Total \$	Ongoing Cost	Ongoing Yrs.
Plans and Specifications- All Phases Completed	\$550,000	LS	1	\$550,000	0	
Project Management	\$200,000	LS	1	\$200,000	0	
Planning, Design, & Permitting	\$30,000	LS	1	\$30,000	0	
Mobilization	\$80,000	LS	1	\$80,000	0	
Clearing & grubbing	\$5,000	ACRE	17	\$85,000	0	
Excavation	\$20.00	CY	10,000	\$200,000		
<b>Pump Station Retrofit</b>					0	
Magnetic flow meter/sensor	\$4,000	LS	1	\$4,000		
6" gate valves	\$7,500	EA	2	\$15,000		
6" elbow	\$500	EA	1	\$500		
6" pipe	\$3,000	LS	1	\$3,000		
6"X6"X6" tee	\$2,000	EA	1	\$2,000		
6"X10" reducer	\$2,500	EA	1	\$2,500		

CITY OF COSTA MESA  
FAIRVIEW PARK WETLANDS AND RIPARIAN HABITAT PROJECT  
RESTORATION PLAN

6" flexible couplings	\$3,000	EA	2	\$6,000		
Pressure manholes	\$5,000	EA	6	\$30,000		
Salinity sensor	\$10,000	EA	1	\$10,000	0	
Water level transducer	\$5,000	EA	1	\$5,000		
2" PVC	\$6.00	LF	3,000	\$18,000		
3 #8 Conductors	\$1.00	LF	3,000	\$3,000		
Hydrolynx computer	\$30,000	LS	1	\$30,000		
Core 10" diameter hole in pump station wall	\$1,000	LS	1	\$1,000		
LinkSeal LS-475	\$1,000	LS	1	\$1,000		
<b>10" HDPE Pipe</b>	<b>\$40.00</b>	<b>LF</b>	<b>3,000</b>	<b>\$120,000</b>	<b>0</b>	
<b>Manholes</b>	<b>\$3,000</b>	<b>EA</b>	<b>5</b>	<b>\$15,000</b>		
<b>Wetland pond concrete edge detail</b>					<b>0</b>	
Gunite w/wire mesh for slope protection	\$8.50	SQFT	15,000	\$127,500		
Concrete berm for wetland soils	\$220	CY	160	\$35,200		
<b>Concrete detail and weirs</b>	<b>\$22,000</b>	<b>EA</b>	<b>7</b>	<b>\$154,000</b>		
<b>Wetland Pond Slope Protection</b>	<b>\$30</b>	<b>TON</b>	<b>2,800</b>	<b>\$84,000</b>	<b>0</b>	
<b>Wetlands Pond Plantings</b>					<b>0</b>	
Organic mulch	\$12.00	CY	6,000	\$72,000		
Blend & place wetland soils	\$2.00	CY	30,000	\$60,000		

CITY OF COSTA MESA  
FAIRVIEW PARK WETLANDS AND RIPARIAN HABITAT PROJECT  
RESTORATION PLAN

California bulrush	\$6.00	EA	9,600	\$57,600		
Southern cattail	\$6.00	EA	8,400	\$50,400		
Auger holes	\$.50	EA	18,000	\$9,000		
Planting-labor wetlands & CSS	\$2,000	DAY	60	\$120,000		
<b>Coastal Sage Scrub, Willow Scrub Plantings</b>					0	
Soil prep/fine grading	\$1,500	ACRE	9	\$13,500		
Coastal Sage Scrub hydro seeding	\$3,825	ACRE	9	\$34,425		
Mycorrhizal inoculum	\$360	ACRE	9	\$3,240		
Coastal Sage Scrub plantings-1 gal.	\$13	EA	4,704	\$61,152		
Trees, 5 gal	\$25	EA	773	\$19,325		
<b>Alder Woodland</b>					0	
Hydro seeding	\$4,000	ACRE	3	\$12,000		
Alder woodland Acorns	\$1	EA	300	\$30		
Plantings-1g	\$13	EA	500	\$6,500		
Trees-5g.	\$30	EA	\$1,500	\$45,000		
2" forest floor mulch	\$5,000	ACRE	3	\$15,000		
Landscape boulders	\$2,000	EA	40	\$80,000		
<b>Native Grassland</b>					0	
43,000 plugs, 250 3 1/2" pots	\$15,000	ACRE	5	\$75,000		

Temporary Irrigation	\$100,000	LS	1	\$100,000	0	
Plant Establishment & Biologist Monitoring	\$120,000	YEAR	1	\$120,000		1
2 <sup>nd</sup> Year	\$60,000	YEAR	1		\$60,000	1
3 <sup>rd</sup> -5 <sup>th</sup>	\$30,000	YEAR	3		\$90,000	3
Maintenance	\$35,000	YEAR	4		\$140,000	4
Contingency	\$200,000	LS	1	\$200,000	0	
<b>TOTAL</b>				<b>\$2,966,142</b>	<b>\$270,000</b>	
<b>Funding Source</b>						
OCTA M2				\$2,000,000		
MiOcean				\$ 350,000		
City of Costa Mesa				\$ 616,142	\$270,000	

## RESTORATION STRATEGY

Restoration of Fairview Park utilizing OCTA M2 funding includes the creation of 23 acres of native habitat, including the creation of wetland ponds and a water delivery system, and the installation of an irrigation system to establish the native habitat. The 23-acres of habitat include six acres of wetland pond planting, five acres of native grasslands, and three acres of alder woodland and nine acres of coastal sage scrub. The City of Costa Mesa will maintain the restored wetlands and riparian habitat project site in perpetuity.

## GOALS AND OBJECTIVES

**Goal:** Create native habitat in Fairview Park for riparian birds and animals by increasing native plant diversity within ten feet of constructed wetlands and stream channels.

**Objective 1:** Remove approximately 17-acres of non-native invasive species on site.

**Objective 2:** Install a temporary irrigation system to establish the 23-acres of native habitat.

**Objective 3:** Construct a water delivery system from the adjacent Greenville-Banning channel to charge the wetland ponds and streams to sustain the planted 23-acres of native habitat.

**Objective 4:** Plant six acres of wetland pond planting, five acres of native grasslands, and three acres of alder woodland and nine acres of coastal sage scrub.

**Objective 5:** Maintain and monitor the restoration site for 5-10 years to successfully establish the native habitat.

## ANNUAL SUCCESS CRITERIA

### General Mitigation Success Criteria for Wetland Vegetation

All plantings, *Schoenoplectus californicus*, California bulrush, *Typha domingensis*, Southern cattail, shall have a minimum of 80% survival the first year, 95% the second year, and 100% survival thereafter, and/or shall attain 75% cover of native woody species after 3 years and 90% cover of native woody species after 5 years until the end of the monitoring period. Monthly monitoring reports are due to OCTA during the first year to ensure success criteria are being met. Grant funding will be reimbursed upon submittal of maintenance and monitoring reports. Nonnative species shall comprise less than 5% of the cover after 5 years. Invasive species shall comprise 0% of the cover at the end of the 5-year monitoring period. If the survival and cover requirements have not been met, the Operator(s) is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting. Irrigation shall be stopped two years prior to achieving the success criteria.

- In order to determine if the revegetation techniques used have been successful any plant species required that are listed below shall achieve the minimum growth at the end of three and five years. If the minimum growth is not achieved then the Operator(s) shall be responsible for taking the appropriate corrective measures as determined by Wildlife Agency representatives. The Operator(s) shall be responsible for any cost occurred during the revegetation or in subsequent corrective measures.

<u>SPECIES</u>	<u>SIZE AT PLANTING</u>	<u>PLANTING CENTERS</u>	<u>HEIGHT</u>	
			<u>3 yrs</u>	<u>5 yrs</u>
Arroyo Willow	PB	8 ft	10 ft	15 ft
	1 gallon	8 ft	10 ft	15 ft
Black Willow	PB	8 ft	12 ft	18 ft
	1 gallon	8 ft	12 ft	18 ft
Sandbar Willow	PB	5 ft	4 ft	6 ft
	1 gallon	5 ft	4 ft	6 ft
Red Willow	PB	8 ft	9 ft	15 ft

1 gallon      8 ft      9 ft      15 ft

- A two ft. maintenance path is planned around the wetland ponds for maintenance and monitoring access. Orange County vector control will be under contract with the City for the control of mosquitoes on the site.

**Alder Woodland Success Criteria**

All tree plantings shall have a minimum of 80% survival the first year, 95% the second year, and 100% survival thereafter until the end of the monitoring period. Monthly monitoring reports are due to OCTA during the first year to ensure success criteria are being met. Grant funding will be reimbursed upon submittal of maintenance and monitoring reports. All alders, walnuts, and sycamores shall exhibit measurable annual growth in height and trunk girth, and no loss of the primary growth leader. Loss of the primary growth leader shall require the tree be replaced if this occurs in years 1-3. The maintenance and monitoring period shall be extended an additional five years where replacement plantings are required.

- The maintenance and monitoring period shall be 5 years for sycamores. Monitoring for alders and walnuts shall be ten years.

Trees shall be spaced in a manner that achieves the targeted planting density. Surviving trees should be well-distributed spatially across the planting area and any area greater than 400 square feet lacking surviving trees with measurable growth in years 1-3 shall receive replacement supplemental plantings, and the maintenance and monitoring period shall be extended an additional five years where replacement plantings are required.

- Nonnative species shall comprise less than 5% of the herbaceous cover after 5 years (minimum of 10 years for alder tree mitigation). Invasive species shall comprise 0% of the herbaceous cover at the end of the 5-year monitoring period (minimum of 10 years for alder tree mitigation). If the survival and cover requirements have not been met, the Operator(s) is/are responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting (minimum of 10 years for alder tree mitigation). Irrigation shall be stopped two years prior to achieving the success criteria (minimum of five years for alder tree mitigation).

Milestone	Maintenance Action
1 year	If target plant materials experience mortality and do not meet first year success criteria, plants shall be replaced to bring densities up to 100% of the original planting density. Weed cover less than 10%.
2 year	If plants do not meet coverage criteria, additional seeding and planting will be done.
3 year	If plants do not meet coverage criteria, additional seeding and planting will be done.
4 year	If plants do not meet coverage criteria, additional seeding and planting will be done.

5 year	If plants do not meet coverage criteria, additional seeding and planting will be done.
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The maintenance action for the alder woodland will have a ten year maintenance and monitoring time period. Monthly monitoring reports are due to OCTA during the first year to ensure success criteria are being met. Grant funding will be reimbursed upon submittal of maintenance and monitoring reports.

**Native Grassland Success Criteria**

**Year One-** 15% or greater relative cover by native grass species throughout the site  
Less Than 20% relative cover by nonnative grasses and ruderal forbs.  
Greater than 35% absolute vegetative cover.

**Year Two-** 20% or greater relative cover by native grass species throughout the site  
Less Than 20% relative cover by nonnative grasses and ruderal forbs.  
Greater than 45% absolute vegetative cover.

**Year Three-** 30% or greater relative cover by native grass species throughout the site  
Less Than 20% relative cover by nonnative grasses and ruderal forbs.  
Greater than 55% absolute vegetative cover.

**Year Four-** 40% or greater relative cover by native grass species throughout the site  
Less Than 20% relative cover by nonnative grasses and ruderal forbs.  
Greater than 60% absolute vegetative cover.

**Year Five-** 50% or greater relative cover by native grass species throughout the site  
Less Than 20% relative cover by nonnative grasses and ruderal forbs.  
Greater than 65% absolute vegetative cover.

Milestone	Maintenance Action
1 year	If target plant materials experience mortality and do not meet first year success criteria, plants shall be replaced to bring densities up to 100% of the original planting density. Weed cover less than 20%.
2 year	If plants do not meet coverage criteria, additional seeding and planting will be done. Weed cover less than 20%.
3 year	If plants do not meet coverage criteria, additional seeding and planting will be done. Weed cover less than 20%.
4 year	If plants do not meet coverage criteria, additional seeding and planting will be done. Weed cover less than 20%.
5 year	If plants do not meet coverage criteria, additional seeding and planting will be done. Weed cover less than 20%.

Monthly monitoring reports are due to OCTA during the first year to ensure success criteria are being met. Grant funding will be reimbursed upon submittal of maintenance and monitoring reports.

**Coastal Sage Scrub Success Criteria**

Milestone	Assessment Criteria	Maintenance Action
1 year	All plants (seeds, container plantings, transplantations) to achieve 25% overall shrub cover and 90% survivorship of container stock. Community-defining species to constitute a minimum of 40% of overall shrub cover.	If target plant materials experience mortality and do not meet first year success criteria, plants shall be replaced to bring densities up to 100% of the original planting density. Weed cover less than 10%.
2 year	All plants (seeds, container plantings, transplantations) to achieve 40% overall shrub cover and 90% survivorship. Weed cover less than 10%. Community-defining species to constitute a minimum of 40% of overall shrub cover.	If plants do not meet coverage criteria, additional seeding and planting will be done.
3 year	All plants (seeds, container plantings, transplantations) to achieve 50% overall shrub cover and 90% survivorship. Weed cover less than 10%. Community-defining species to constitute a minimum of 40% of overall shrub cover. Supplemental irrigation is discontinued at the beginning of the 3rd year.	If plants do not meet coverage criteria, additional seeding and planting will be done.
4 year	All plants (seeds, container plantings, transplantations) to achieve 60% overall shrub cover and 90% survivorship. Weed cover less than 10%. Community-defining species to constitute a minimum of 40% of overall shrub cover.	If plants do not meet coverage criteria, additional seeding and planting will be done.
5 year	All plants (seeds, container plantings, transplantations) to achieve 70% overall shrub cover and 90% survivorship. Weed cover less than 10%. Community-defining species to constitute a minimum of 40% of overall shrub cover. This marks the final success criteria for the Mitigation and Monitoring Plan.	If plants do not meet coverage criteria, additional seeding and planting will be done.

Monthly monitoring reports are due to OCTA during the first year to ensure success criteria are being met. Grant funding will be reimbursed upon submittal of maintenance and monitoring reports.

**SITE ASSESSMENT**

The existing restoration site is the lower northern 51 acres of Fairview Park. 11-acres of the site is a Coastal Sage Scrub restoration area that is in its fifth year of maintenance and monitoring. This project was funded by Headlands LLC as mitigation for the Headlands Dana Point project.

Restoration of Phase I of the Wetlands and Riparian Habitat Project was completed in September 2009 and the first year of maintenance and monitoring was completed in September 2010.

Seventeen acres of riparian habitat was planted as well as the grading of two wetland ponds and streams, and the installation of an irrigation system.

Invasive species on site have been eradicated with the exception of the area being restored for this 23-acre project.

Sensitive species onsite include:

*Centromadia parryi* ssp *australis*, southern tarplant, It is included in the CNPS Inventory of Rare and Endangered Plants on list 1B.1 (*rare, threatened, or endangered in CA and elsewhere*).

[http://cnps.site.aplus.net/cgi-bin/inv/inventory.cgi/Show?\\_id=centromadia\\_parryi\\_ssp.\\_australis](http://cnps.site.aplus.net/cgi-bin/inv/inventory.cgi/Show?_id=centromadia_parryi_ssp._australis)

*Ardea alba*, great egret-CDFG Special animals list,  
<http://dfg.ca.gov/biogeodata/cnddb/pdfs/SPAnimals.pdf>

*Ardea Herodias*, great blue heron-CDFG Special animals list,  
<http://dfg.ca.gov/biogeodata/cnddb/pdfs/SPAnimals.pdf>

*Accipiter cooperii*, cooper's hawk- CDFG Special animals list,  
<http://dfg.ca.gov/biogeodata/cnddb/pdfs/SPAnimals.pdf>

*Elanus leucurus*, white-tailed kite- CDFG Special animals list,  
<http://dfg.ca.gov/biogeodata/cnddb/pdfs/SPAnimals.pdf>

*Polioptila californica californica*, coastal California gnatcatcher- CDFG Special animals list,  
<http://dfg.ca.gov/biogeodata/cnddb/pdfs/SPAnimals.pdf>

## PLANTING PLAN

### Species to be planted (See attachment C for individual habitats):

Platanus Racemosa	California Sycamore
	Alder
Sambucus Mexicana	Mexican Elderberry
Schoenoplectus californicus	California bulrush
Typha domingensis	Southern cattail
Encelia californica	Bush Sunflower
Eriogonum fasciculatum ssp. fasciculatum	California Buckwheat
Isocoma menziesii var. venustus	Coastal Goldenbush
Isomeris arborea var. arborea	Bladderpod
Opuntia littoralis	Coastal Prickly Pear
Opuntia prolifera	Coastal Cholla
Abronia cilliosa var. aurita	Chaparral Sand-verbena
Baccharis pilularis	Coyote Bush
Baccharis salicifolia	Mule Fat
Rosa californica	California Wild Rose
Rubus ursinus	California Blackberry

Salix exigua	Narrow-leaved Willow
Salix lasiolepis	Arroyo Willow
Nasella lepida	Foothill Needlegrass
Nasella pulchra	Purple Needlegrass
Sisyrinchium bellum	California Blue-eyed Grass
Baccharis pilularis	Coyote Bush
Abronia cilliosa var. aurita	Chaparral Sand-verbena
Heteromeles arbutifolia	Toyon
Malosma laurina	Laurel sumac
Mirabilis californica	California wishbone bush
Rhus integrifolia	Lemonade berry
Ribes speciosum	Fuchsia flowered gooseberry

## **SPECIES PROTECTION**

### **Federally or state-listed species**

The restoration site(s) (or suitable habitat within the restoration site[s]) shall be surveyed for listed species prior to the onset of restoration activities to ensure that no direct or indirect impacts will occur from project implementation. Surveys shall be conducted by a qualified biologist using agency-approved, species-specific survey protocols. If listed species are detected, the Project Sponsor(s) shall adhere to conditions in sections 2.8.2 and 2.8.3, of the Measure M2 Environmental Mitigation Program Restoration Funding Guidelines, as appropriate, including the preparation of a Species Protection Plan.

If restoration activities occur subsequent to site preparation (e.g., remedial grading in year 2 or 3), a qualified biologist shall re-survey for listed species using agency approved, species-specific survey protocols. If listed species are detected, the Project Sponsor(s) shall adhere to conditions in sections 2.8.2 and 2.8.3 of the Measure M2 Environmental Mitigation Program Restoration Funding Guidelines as appropriate, including the preparation of a Species Protection Plan.

### **Breeding/nesting birds**

If vegetation removal or other activities that may result in the destruction of nests and death or injury of nestlings and fledglings during the bird breeding season (March 15<sup>th</sup> to September 15<sup>th</sup> in riparian habitat and February 15<sup>th</sup> through August 31<sup>st</sup> in upland habitat), breeding bird surveys will be conducted. These surveys will consist of at least three surveys conducted the week prior to conducting activities, with the last survey occurring within 2 days prior to commencement of work activities. If no breeding/nesting birds are observed and concurrence has been received from OCTA, work activities may begin. If breeding/nesting birds are observed, the measures described in 2.9.3 of the Measure M2 Environmental Mitigation Program Restoration Funding Guidelines will be implemented.

### **Southwestern pond turtle**

Suitable habitat within the restoration site(s) (i.e., drainages that contain standing water and adjacent uplands) shall be surveyed for southwestern pond turtle (*Actinemys marmorata*) prior to the onset of restoration activities to ensure that no direct or indirect impacts will occur from project implementation. Presence/absence surveys shall be conducted by a qualified turtle biologist. The biologist shall survey both aquatic habitat and potential breeding areas or existing nests in adjacent uplands.

### **Bats**

If the restoration project includes any work at a bridge site, a qualified bat biologist shall survey the bridge structure for bats prior to the onset of restoration activities. The biologist shall conduct a minimum of 3 surveys, 7 days apart; unless a positive presence is determined, the surveys can be ended.

### **Restoration Restrictions**

-If threatened or endangered bird species are present in or adjacent to the restoration area, no work shall occur during the breeding season (March 15<sup>th</sup> through September 15<sup>th</sup> in riparian habitat and February 15<sup>th</sup> to August 31<sup>st</sup> in upland habitat) to avoid direct or indirect (e.g., noise) impacts to listed species *except* as authorized by state and/or federal threatened/endangered species permits/authorizations which may be required prior to commencing restoration activities.

-If breeding activities and/or active bird nests of unlisted bird species are located and concurrence has been received from OCTA, the breeding habitat/nest site shall be fenced or otherwise marked a minimum of 50 feet (250 feet for raptors) in all directions, and this area shall not be disturbed until the nest becomes inactive, or the young have fledged, are no longer being fed by the parents, have left the area, or will no longer be impacted by the project.

-Where restoration activities may disturb nesting swallows on bridges, the Project Sponsor(s) shall avoid work March 15<sup>th</sup> through September 15<sup>th</sup>. If such a condition cannot be met, then prior to March 1<sup>st</sup> of each year, the Project Sponsor(s) shall remove all existing nests which would be impacted by the project. The Project Sponsor(s) shall continue to discourage new nest building in places where they would be disturbed using methods approved by OCTA. Nest removal and hazing must be repeated at least weekly until restoration activities begin or until a swallow exclusion device is installed. The exclusion device must provide a space of four to six inches for the passage of snakes at the bottom edge. Nests must be discouraged throughout the restoration implementation phase. At no time shall occupied nests be destroyed as a result of project implementation.

-If southwestern pond turtles are present in or adjacent to the restoration area, impacts to turtle habitat in wetlands or uplands from project implementation shall take place outside the breeding period (April-August).

-If bats are present in or adjacent to the restoration area, OCTA shall be notified and provisions for their protection/conservation will be discussed. If loss of significant bat roosting habitat occurs due to the implementation of the project, the Project Sponsor(s) shall institute protection measures including the installation of roosting structures below the deck at OCTA approved locations.

-If work is performed within any stream channel during the winter storm period, the Project Sponsor(s) shall monitor the five day weather forecast. Where the forecast indicates precipitation, the Project Sponsor(s) shall secure the site to prevent materials from entering the stream or washing downstream. The site shall be completely secured one day prior to precipitation, unless prior written approval has been provided by OCTA. During precipitation events, restoration activities are prohibited *except* for those activities necessary to secure the site. No work shall occur in areas containing flowing water until the flows have receded and the soil moisture content has stabilized.

## **SITE PREPARATION AND INSTALLATION**

The "weed farming" method of removal will be utilized for the restoration site. Reclaimed irrigation will be utilized during the weed removal and plant establishment period. Weed farming includes a cycle of irrigation, weed germination, and weed removal that may be repeated up to 12 times or more as a means of reducing the weed seed bank. Mechanical clearing, mowing, and non-residual herbicides (e.g., Rodeo and/or Roundup) may be used to remove weed and exotic species, will be used in combination with weed farming. The weed farming process is described below: The site will be cleared of weeds by mechanical mowing. Cut vegetation (including stems and flowering heads) will be removed from the site and disposed of at an appropriate offsite facility. In the absence of natural rainfall, the restoration area will be irrigated two times per week for a two week period using a temporary irrigation system. Soils shall be saturated to a depth of at least 3 inches during each irrigation cycle.

Germinated weeds will be mowed and/or treated with an appropriate postemergent herbicide at the end of the first two week irrigation cycle. Dead vegetation will be removed from the site and disposed of at an appropriate offsite location.

The cycle of irrigation and weed removal, as described above, will be repeated at least 3 times, including the initial cycle. The cycle will be repeated during different seasons to ensure the removal of both annuals and perennials.

## **RESTORATION MAINTENANCE PROGRAM**

The contractor responsible for the planting of the restoration site will be responsible for the first year of maintenance and monitoring. City staff and a landscape contractor will be responsible for the remaining 4-9 years of maintenance and monitoring period.

During the first year of maintenance, the contractor will perform weed control, litter control, erosion control, and irrigation checks on a weekly basis. An irrigation system is currently operating on site establishing the 17-acres of riparian habitat that is in its second year of monitoring. The new irrigation system for this project will tie into the existing system with the addition of one more automatic controller (See Attachment C). The system uses reclaimed water.

## **RESTORATION MONITORING PROGRAM**

A five year maintenance and monitoring plan has been developed for the native habitat plantings except for the alder woodland which is for a ten year period. Monitoring will assess the attainment of

annual and final success criteria and identify the need to implement contingency measures in the event of failure. Monitoring methods include field sampling techniques that are based upon the California Native Plant Society field sampling protocol. The City has also installed three monitoring wells to gauge the groundwater replenishment.

Monitoring will assess the attainment of annual and final success criteria and identify the need to implement contingency measures in the event of failure. For the first year after planting monitoring will occur on a monthly basis and reports will be generated and submitted to OCTA. Grant funding will be reimbursed upon submittal of maintenance and monitoring reports. An annual report will also be submitted to OCTA and the wildlife agencies. Grant funding will be reimbursed upon submittal of maintenance and monitoring reports.

During years 2-5 of the restoration monitoring reports will be generated on a quarterly basis. A photo journal of the project will be submitted by the City's contracted biologist. Monitoring methods include field sampling techniques that are based upon the California Native Plant Society field sampling protocol. Please refer to *A Manual of California Vegetation* for further details on this sampling method.

#### **Transect Methods**

Quantitative sampling within the restoration site will be performed using 25-meter line-intercept transects that were placed randomly throughout the site. Placement of transects will be determined using random numbers tables to provide two coordinates, one that indicates the distance along a longitudinal centerline bisecting the site and one that determines the distance from the line. Vegetative cover will be estimated by species present at 0.5-meter intervals and recorded on a data sheet. Sampling will be conducted with sufficient replication to detect a 10% difference in absolute ground cover between the mean of the restoration and the annual success criteria with 90% power at an alpha level of 0.10.

*This Agreement template is for informational purposes only and is intended for use as an example to vendors showing the City's requirements. When making a request, please submit only the Request form, above, and supporting documents.*

**PROFESSIONAL SERVICES AGREEMENT  
FOR**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and \_\_\_\_\_, a California corporation ("Consultant").

**WITNESSETH:**

- A. WHEREAS, City proposes to have Consultant perform \_\_\_\_\_ as described herein below; and
- B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and
- C. WHEREAS, City and Consultant desire to contract for specific services in connection with the project described below (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the City's Request for Proposal ("RFP") attached hereto as Exhibit "A" and incorporated herein by reference and Consultant's Response to City's RFP (the "Response"). A copy of said Response is attached hereto as Exhibit "B" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

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

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

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

## 2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ .00).

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

2.3. Method of Billing. Consultant may submit invoices to City's Project Manager for approval on a progress basis, but no more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed and the associated time for completion. Any additional services approved and performed pursuant to this 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 "D," 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 \_\_\_ (X) year, ending on \_\_\_\_\_, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

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

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to,

finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

## 5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

5.3. Certificates of Insurance: Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

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

**6.0. GENERAL PROVISIONS**

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

6.2. Representatives. The City Manager or his designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and 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:

Tel:  
Fax:  
Attn:

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: 714-754-  
Fax: 714-754-  
Attn:

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 "C" and incorporated herein by reference. Consultant's failure to conform to the requirements

set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless: Consultant shall protect, defend, indemnify and hold harmless City and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of Consultant, its employees, agents or subcontractors in the performance of this Agreement.

6.10. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

6.11. Ownership of Documents: All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete

documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

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

6.13. 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.

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

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

6.16. 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.

6.17. 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.

6.18. 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.

6.19. 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.

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

6.21. 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.

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

6.23. 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.

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

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

CITY OF COSTA MESA,  
A municipal corporation

\_\_\_\_\_  
Mayor of the City of Costa Mesa

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

CONSULTANT

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name and Title

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

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

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Risk Management

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Project Manager

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

**EXHIBIT E**

**CITY COUNCIL POLICY 100-5**

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

**POLICY**

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
  - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

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

- b. Establishing a Drug-Free Awareness Program to inform employees about:
  - 1. The dangers of drug abuse in the workplace;
  - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
  - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
  - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
  - 1. Abide by the terms of the statement; and
  - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1.D.2 with respect to an employee who is so convicted:
  - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
  - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

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

- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
    - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
    - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
    - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
  3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

**EXHIBIT B  
CONSULTANT'S PROPOSAL**



## Endemic Environmental Services

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**Attn:**

Robert Staples, Contract Administrator  
City of Costa Mesa  
Public Services Department  
77 Fair Drive  
Costa Mesa, CA 92628

### **Executive Summary**

Endemic Environmental Services Inc. (Endemic) is please to submit a cost proposal for the Fairview Park Native Habitat Monitoring Services (RFP). Endemic has submitted a monitoring schedule and lump sum cost proposal for all work described in the RFP for 17 acres of native plantings, irrigation, wetland ponds, and multipurpose trails.

Endemic has a profound understanding of the Fairview Park native habitat. In the past, CJW Construction, the City of Costa Mesa, and Landforms Construction Landscaping has contracted endemic to oversee, design, monitor and consult to ensure that the habitat restoration project establishes on schedule and in compliance with involved resource agencies. Endemic is aware of the requirements the City of Costa Mesa needs to meet for the establishment of the Fairview Park Wetlands and Riparian Habitat Project. To ensure an open line of communication with the City of Costa Mesa, Endemic is dedicated to have regular meetings to ensure the success of the Fairview Park Wetlands and Riparian Habitat Project.

### **Key Personnel**

Barry Nerhus, Endemic's Restoration Ecologist, will be the project manager for all maintenance and monitoring activities. He will also be responsible for conducting meetings with the City of Costa Mesa to ensure that all tasks are being executed and on schedule. Barry Nerhus has worked in ecological restoration for 8 years. He has experience conducting habitat restoration projects from San Luis Obispo County to San Diego County including San Clemente Island. He is conducted habitat restoration projects in needlebunch grasslands, oak woodlands, freshwater marshes, saltwater marshes, freshwater streams, vernal pools, chaparral, coastal sage scrub, island sage scrub, coastal dunes, and estuaries. He has also conducted rare plant focused restoration projects, which included:

Southern Tarplant (*Centromadia parryi australis*) Rare Plant 1b.1  
Marsh's Sandwort (*Arenaria paludicola*) federally endangered  
Gambel's Watercress (*Nasturtium gambelii*) federally endangered  
Tecate Cypress (*Cupressus forbesii*) Rare Plant 1b.1



## Endemic Environmental Services

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Coastal Woolly Heads (*Nemacaulis denudata denudata*)  
Southern Island Mallow (*Lavatera assurgentifolia glabra*)

With this diversity of habitats experience, Barry Nerhus has the experience for the diversity of habitats at Fairview Park. Additionally, Barry Nerhus is a strong candidate as project manager and a strong choice because he has been involved with the habitat restoration at this project site since the 17.8 acre Phase 1 project was implemented. Through his recommendations, the phase 1 restoration project has flourished and was stated to be one of the best restoration projects the Army Corp of Engineers has in southern California. Barry Nerhus has been involved with many levels of this complex project. He has conducted rare plant surveys, assisted in the design and editing of plant palettes for both phase 1 and 2, monitored and reported the maintenance issues and overall health of the site.

### List of similar projects:

Fairview Park Phase 1 – Year 1

Project Description: Endemic was contracted by the CJW Construction to assist CJW Construction and the Army Corp of Engineers to restore 17.8-acre riparian habitat area successful in the installation and the maintenance of the site. Endemic's restoration ecologist, Barry Nerhus, assisted in adjusting the plant palette, drafted a non-native plant book for site maintenance, conducted 11 monthly monitoring visits and one quantitative annual monitoring visit, drafted 11 monthly reports and 1 annual report, and conducted weekly meetings to ensure the project is on schedule.

Naeem Siddiqui  
Army Corp of Engineers Biologist  
(213) 304-6272  
Years Completed: 1  
Cost: \$65,000

Fairview Park Phase 1 – Year 2-5

Project Description: Endemic was contracted by the City of Costa Mesa to conduct 3 quarterly monitoring visits and 1 annual monitoring visit. For each monitoring visit, a report was submitted to the City.

Robert Staples  
Contractor Administrator  
City of Costa Mesa  
(818) 388-0564  
Years Completed: 1  
Cost: \$86,000



## Endemic Environmental Services

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### Fairview Park Phase 2 – Design

Project Description: Endemic was contracted by the City of Costa Mesa to assist in the plant palette design and layout for the 23-acre phase 2 restoration project.

Robert Staples  
Contractor Administrator  
City of Costa Mesa  
(818) 388-0564  
Years Completed: 1  
Cost: \$5,000

### Fairview Park Phase 2 – Implementation and Monitoring

Project Description: Endemic was contracted by Landforms Landscape Construction as their restoration ecologist consultant to ensure the implementation and monitoring was conducted per project specifications delivered to the contractor by the City of Costa Mesa.

Jeff Tracy  
Landforms Landscape Construction  
(714) 606-4002  
Years Completed 1.5  
Cost: \$90,000

### Fairview Park Phase 2 – Drafted Native and Non-native Plant Book

Project Description: Endemic was contracted by the City of Costa Mesa to draft a maintenance book for the phase 2 restoration project.

Robert Staples  
Contractor Administrator  
City of Costa Mesa  
(818) 388-0564  
Years Completed: >1  
Cost: \$ 1,800

### Newport Bay Conservancy – Bayview Mesa Restoration Project

Peter Fuhrer  
(949) 274-1768  
Years Completed 2  
Cost: \$30,000

### Los Angeles World Airports (LAWA) – Southern Tarplant Mitigation



## Endemic Environmental Services

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**Project Description:** Consulted, implemented, maintained and monitored a 1 acre southern tarplant mitigation site over a 3 year period. Endemic assisted in drafting the habitat mitigation & monitoring program and also delivered LAWA recommendations for long-term maintenance.

Peggy Nguyen  
LAWA ESD  
(424) 646-6488  
Years completed 3  
Cost: \$8,000

**Nature Reserve of Orange County (NROC) – Mustard Experiment**

**Project Description:** Endemic has conducted a long term weeding experiment for NROC. The project consisted of weeding using mechanical and chemical methods, data collection, seed collection and implementation and reporting.

Milan Mitrovich  
NROC  
(949) 491-0502  
Years Completed: 4  
Cost: \$65,000

### Quarterly Project Site Monitoring Schedule

Site assessments will be performed on a quarterly basis, which will consist of 3 quarterly monitoring days and 1 annual monitoring. The quarterly monitoring will be a qualitative site inspection monitoring progress of the native plant community establishment. The annual monitoring will be a quantitative analysis of the native plant coverage, native plant survivability, and overall ecosystem function and health. Reports will be submitted within 30 days after site monitoring is completed.

Site Inspection Schedule	Monitoring
February	Qualitative
May	Qualitative
August	Qualitative
November	Quantitative



## Endemic Environmental Services

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### **Wildlife Mapping and Cowbird Trapping**

Endemic will perform all necessary wildlife maps of rare or endangered species as well as execute a cowbird trapping program because of two endangered species present on site; the least Bell's vireo and California gnatcatcher.

### **Fee Proposal**

Lump Sum: 3 Quarterly Monitoring/Reporting & 1 Annual Monitoring/Reporting - \$23,440.00

Lump Sum: Wildlife Mapping and Cowbird Trapping - \$15,000.00

Total Cost - \$38,440.00

If there are any questions, comments, concerns, or suggestions, please feel free to contact me.

Sincerely,

REDACTED

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