

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
PETER TEMPLETON/TEMPLETON PLANNING GROUP, AND
NEXUS DEVELOPMENT CORPORATION/CENTRAL DIVISION**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into on June 22, 2016 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and PETER TEMPLETON, unofficially doing business as TEMPLETON PLANNING GROUP, a sole proprietor ("Consultant"), and NEXUS DEVELOPMENT CORPORATION/CENTRAL DIVISION, a California corporation ("Applicant"). City, Consultant, and Applicant shall collectively be known as "Parties".

WITNESSETH

WHEREAS, City proposes to utilize the professional services ("Services") of Consultant as an independent contractor to provide an addendum to the initial study/mitigated negative declaration ("Project"), as more fully described herein; and

WHEREAS, Consultant represents that it has the 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

WHEREAS, the Parties desire to contract for the Services described in the Scope of Work, attached and incorporated herein as "Exhibit A," which sets forth their rights, duties and liabilities in connection with the Services to be performed; and

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:

TERMS AND CONDITIONS

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide to City the Services described in the Scope of Work, attached hereto as "Exhibit A."

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

performance of the Consultant during 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 time hereinafter specified. Evaluations of the work will be done by the City's Chief Executive Officer ("City CEO") or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

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

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

1.6. Non-Exclusive Agreement. Consultant and Applicant acknowledge that City may enter into agreements with other consultants for Services similar to the Services that are subject to this Agreement or may have their 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 and Applicant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant and Applicant covenant that all data, documents, discussion, or other information developed or received by Consultant and Applicant or provided

for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant and Applicant 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 and Applicant'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 B," attached hereto and made a part of this Agreement ("Fee Schedule"). Total compensation of Consultant shall not exceed Twenty One Thousand Five Hundred Dollars (\$21,500.00).

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 Services of Consultant, 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 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 Services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said Services shall be performed in strict compliance with the Project Schedule approved by City as set forth in "Exhibit C," attached hereto and incorporated herein by this reference. The Project Schedule may be amended in writing, 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. None of the Parties shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the 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 twelve (12) months, ending on June 21, 2017 ("Initial Term"), unless previously terminated as provided herein or as otherwise agreed to in writing by the Parties. At the end of the term period, the Parties may mutually agree, in writing, to renew the contract for one (1) term period of (1) year. The intent of this Agreement is to provide for the time, services, and compensation to complete the Project.

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 and Applicant. 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 and Applicant shall be at City's sole risk and without liability or legal expense to Consultant and Applicant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in

California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations,

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

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

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

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant and Applicant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by

the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

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

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

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire understanding 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 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 and Applicant 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 and Applicant 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 and Applicant in the performance of this Agreement.

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

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

IF TO CONSULTANT:

Templeton Planning Group
Attn: Peter Templeton
20250 Acacia Street, Suite 260
Newport Beach, CA 92660
Tel: (949) 724-0640
ptempleton@templetonplanning.com

IF TO CITY:

City of Costa Mesa
Attn: Daniel Inloes | Development Services
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5088
daniel.inloes@costamesaca.gov

IF TO APPLICANT:

Nexus Development Corp/Central
Division
Attn: Rob Eres
1 MacArthur Place, Suite 300
Santa Ana, CA 92707
Tel: (714) 546-5600
rwe@nexusd.com

Courtesy Copy to CITY:

City of Costa Mesa
Attn: Finance Director | Purchasing
77 Fair Drive
Costa Mesa, CA 92626

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as "Exhibit E" and incorporated herein by reference. Failure by Consultant 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 and Costs. 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 and costs, 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 and Applicant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's or Applicant'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 and Applicant of their respective obligations to perform all other obligations to be performed by Consultant and Applicant 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 the sole expense of Consultant, 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 negligent 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 their 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 Proposal of Consultant, 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 and Applicant 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 and Applicant or any of Consultant or Applicant employees, except as set forth in this Agreement. Consultant and Applicant 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 relationships 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 failure by Consultant 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 and Applicant agree 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 and Applicant. City shall indemnify and hold harmless Consultant and Applicant 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 and Applicant. 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. Each of Consultant and Applicant 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 and Applicant 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, Consultant, Applicant, 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 either Party by virtue of the authorship of any of the provisions of this Agreement.

6.23. Amendments and Modifications. Only a writing executed by the Parties hereto, or their respective successors and assigns, may amend this Agreement. Modification may not occur through performance.

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 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

[Redacted Signature] _____
Thomas Hatch, Chief Executive Officer

Date: 6/24/16

[Redacted Signature] _____
Steve Dunivent, Interim Finance Director

Date: 6/24/16

CONSULTANT - TEMPLETON PLANNING GROUP

[Redacted Signature] _____
Peter Templeton, Principal

Date: 6-24-16

Last 4 digits of Social Security Number (sole proprietor)

APPLICANT – NEXUS DEVELOPMENT CORPORATION/CENTRAL DIVISION

[Redacted Signature] _____
Matthew B. Kaufman, Sr. Vice President, Operations

Date: 6-23-2016

[Redacted Signature] _____
Taxpayer ID Number

APPROVED AS TO FORM:

[Redacted Signature] _____
Thomas P. Duarte, City Attorney

Date: 6/24/16

APPROVED AS TO INSURANCE:

[Redacted Signature]

Ruth Wang, Risk Management

Date: 6/24/16

APPROVED AS TO CONTENT:

[Redacted Signature]

Daniel Inloes, Senior Planner

Date: 6/24/2016

DEPARTMENT HEAD APPROVAL:

[Redacted Signature]

Gary Armstrong, Director of Development Services

Date: 6-24-16

ATTEST:

[Redacted Signature]

Brenda Green, City Clerk



Date: 6-24-16

EXHIBIT A
SCOPE OF SERVICES

JUSTIFICATION FOR SOLE SOURCE REQUEST

Date: 05/24/16 Dept./Div.: Development Services/Planning Phone: x5023

Contact: Silvia Kennerson o/b/o Daniel Inloes

Description of Equip./Service Req.: Environmental Review

Recommended Vendor: Templeton Planning

Address: 20250 Acacia Street, Ste. 260, Newport Beach, CA 92660 Phone: 949-724-0640

1. Check reason for sole source request:
- Sole Source:** No other items are known to exist which perform the same function.
 - Proprietary:** The item is held under exclusive title, trademark or copyright by a private person or company; a proprietary distributorship would also apply.
 - Standardization:** The City requires the item(s) to standardize parts, design, quality, etc. (explain in more detail below)

2. Is the product or service available from other sources?
- Yes
 - No

If YES, list name of vendors:
LSA Associates (\$42,400), Chambers Group (\$26,750) and Michael Baker Int. (\$18,900)

If NO, explain why the product/service is available from only one source:
N/A

3. Can your requirements be modified so that competitive products or services may be used?
- Yes
 - No Please explain:
See attached page

4. How does the recommended vendor's prices or fees compare to the general market?
- This is a third party contract and the developer will pay all fees associated with addendum. The recommended vendor's prices are very similar to the general market. Estimates from other vendor show approximate prices of \$18,900 - \$42,400 (see #2). The recommended vendor's price is \$21,500.

Dept./Div. Head's Signature: _____ Date: 5-26-16

Buyer
Purchasing Supervisor's Signature: _____ Date: 6/7/16

Purchasing Officer's Signature: _____ Date: 6-8-16

JUSTIFICATION FOR SOLE SOURCE REQUEST (TEMPLETON PLANNING)

1. Reason for Sole Source:

Staff is requesting a sole source for environmental review for planning application PA-15-60 for Vivante Phase 2. This project at 1640 Monrovia Avenue is within the Westside Urban Plan. When the project originally went through the discretionary review process and was approved, the environmental review was completed by Templeton Planning Group. Since Templeton Planning Group conducted the previous environmental review, for continuity, their review of this project's modified plan for Phase 2 of Vivante would be more efficient and expedite the review process.

If the services for Templeton Planning were not used, it would involve additional time to have a different consultant other than the original preparer to complete the environmental review.

3. Can your requirements be modified so that competitive products or services may be used?

No. Templeton Planning prepared the original environmental review for the approved project located at 1640 Monrovia Avenue. The project is now modified and additional residential units are proposed. As such, the project requires new approvals and an addendum to the original environmental review. Since Templeton Planning is the consultant who published the original environmental review, Planning staff requests Templeton Consulting prepare the addendum to the modified project.

EXHIBIT B
FEE SCHEDULE

SERVICE CONTRACT

Date Prepared: May 6, 2016

Project Name: Vivante Phase II Project No.: CCM-01

Client: Name: City of Costa Mesa
Address: 77 Fair Drive
Costa Mesa, CA 92626
Contact: Mr. Dan Inlose

Planner: Name: TEMPLETON PLANNING GROUP
Address: 20250 SW Acacia St., Suite 260
Newport Beach, CA 92660

Type of Authorization: New Contract Contract Extension

Contract Amount: \$ 21,500

RE: **AMENDING THE INITIAL STUDY / MITIGATED NEGATIVE DECLARATION FOR THE VIVANTE PHASE II SENIOR PROJECT IN COSTA MESA, CALIFORNIA.**

The Templeton Planning Group is pleased to submit the following proposal to the City of Costa Mesa for environmental planning services for the Vivante Phase II senior project.

The Vivante Phase II is an expansion of the existing Vivante property located at 1640 Monrovia Avenue in the City of Costa Mesa. Phase II consists of approximately 148,000 square feet, 118 Assisted and Independent living units, a fitness center, grand entertainment pavilion, rooftop deck, restaurant, and activity rooms.

1. Scope of Services

To provide peer reviews of updated technical studies, amend the initial study / mitigated negative declaration, one public meeting and one meeting with City staff for the Vivante Phase II project.

2. Schedule

The work tasks mentioned above will be completed as agreed upon with the client.

3. Subsequent Planning Services

If any additional work or studies are requested by the client in excess of the work described above, such as additional meetings, technical studies, or special graphic studies, these tasks will be handled by a contract addendum.

4. Fee Basis and Amount

Work performed will be billed on a monthly time and materials basis as work is performed, and payment will be due upon receipt of invoice. You will only be billed for work performed per your request.

5. Reimbursables

Charges for out of pocket expenses for services not directly furnished by the Templeton Planning Group, and any unusual items of expense not customarily incurred in our normal operations are computed at a cost plus 15 percent. Such items include, but are not limited to, delivery costs, printing and binding, scanning, sub-consultants, living and travel out of town, and rental equipment and vehicles. These reimbursable costs are not included in our estimated budget and are billed in addition to the contract amount.

ACKNOWLEDGMENT

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

Sincerely,



Peter Templeton
Principal
Templeton Planning Group

May 6, 2016

Date

Dan Inlose
Development Services
City of Costa Mesa

Date

EXHIBIT C
PROJECT SCHEDULE

VIVANTE PHASE II
AMENDED IS/MND
 PROJECT TIMELINE

May 6, 2016

Mon	Tue	Wed	Thu	Fri
9-MAY	10	11	12	13
	<ul style="list-style-type: none"> • TPG to receive all necessary documents to begin work (Project Description, etc.) • Traffic study (ongoing) • Project Description & plans to Hans Giroux 	TPG continue preparing Amend. IS/MND		
16	17	18	19	20
TPG continue preparing Amend. IS/MND				
23	24	25	26	27
TPG continue preparing Amend. IS/MND	<ul style="list-style-type: none"> • Traffic Study completed • 2-day TPG peer review of Traffic study begins 		<ul style="list-style-type: none"> • 2-day TPG peer review of Traffic study completed • TPG to send Traffic study to Hans Giroux to prepare technical studies (12 days) 	TPG reviewing and incorporating Traffic study into Amend. IS/MND
30	31	1-JUNE	2	3
TPG reviewing and incorporating Traffic study into Amend. IS/MND		TPG continue preparing Amend. IS/MND		
6	7	8	9	10
TPG continue preparing Amend. IS/MND	<ul style="list-style-type: none"> • Hans' technical studies completed • 3-day TPG peer review of technical studies begins 	TPG reviewing technical studies from Hans Giroux into Amend. IS/MND		

Mon	Tue	Wed	Thu	Fri
13 JUNE	14	15	16	17
TPG incorporating technical studies from Hans Giroux into Amend. IS/MND		<ul style="list-style-type: none"> TPG submit Draft Amend. IS/MND to City City begins 2-day staff review 	City 2-day staff review of Draft Amend. IS/MND	
20	21	22	23	24
<ul style="list-style-type: none"> City completed with 2-day staff review TPG update Amend. IS/MND per City's review 	TPG revising Amend. IS/MND based on City comments			<ul style="list-style-type: none"> TPG to submit final Amend. IS/MND to City
27	28	29	30	1-JULY
4-day City review before public notice				<ul style="list-style-type: none"> City to issue 10-day public Planning Commission notice
4	5	6	7	8
10-day public Planning Commission notice				
11	12	13	14	15
<ul style="list-style-type: none"> GOAL Planning Commission meeting 				
18	19	20	21	22
25	26	27	28	29
<ul style="list-style-type: none"> Second Planning Commission meeting of July 				