

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
ENDEMIC ENVIRONMENTAL SERVICES, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 4th day of April, 2017 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and ENDEMIC ENVIRONMENTAL SERVICES, INC., a California Corporation ("Consultant").

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide biological, management and maintenance 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 Proposals ("RFP"), attached hereto as Exhibit "A," and Consultant's Response to City's RFP ("Consultant's Proposal"), 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 Manager 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, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, 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 by this reference (the

"Fee Schedule"). Consultant's total compensation shall not exceed Three Hundred Ninety Seven and Six Hundred and Forty Dollars (\$397,640.00).

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 from the Effective Date until three (3) years after termination of this Agreement.

### **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 thirty-six (36) months, ending on April 4, 2020, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by one (1) additional term period of one (1) year, upon mutual written agreement of both parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant.

The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

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

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

## **5.0. INSURANCE**

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

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

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

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

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

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "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 Manager 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 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, and (b) 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  
596 Victoria Street, B102  
Costa Mesa, CA 92627  
Tel: (714) 393-6249  
Attn: Barry Nerhus

### IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5303  
Attn: Baltazar Mejia

### Courtesy copy to:

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

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 agents 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.

[SIGNATURES FOLLOW ON NEXT PAGE]

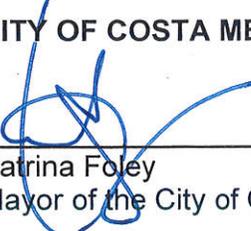
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

**CONSULTANT**

  
Signature  
Barry Nerhus President  
[Name and Title]

Date: 17 Mar 2017  
45-24862177  
Social Security or Taxpayer ID Number

**CITY OF COSTA MESA**

  
Katrina Foley  
Mayor of the City of Costa Mesa

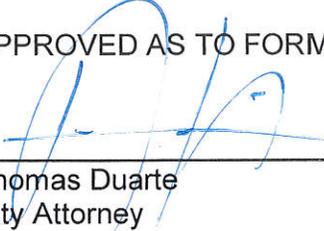
Date: 4-21-17

ATTEST:

Brenda Green  
Brenda Green  
City Clerk



APPROVED AS TO FORM:

 NA  
Thomas Duarte  
City Attorney

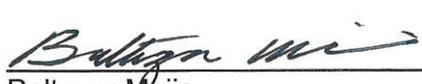
Date: 4/21/17

APPROVED AS TO INSURANCE:

  
Ruth Wang  
Risk Management

Date: 3/21/17

APPROVED AS TO CONTENT:

  
Baltazar Mejia  
Project Manager

Date: 4-7-17

DEPARTMENTAL APPROVAL:

Raja Sethuraman

Raja Sethuraman  
Director of Public Services

Date: 4-11-17

APPROVED AS TO PURCHASING:

Stephen Dunivent

Stephen Dunivent  
Interim Finance Director

Date: 4.18.17

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



December 12, 2016

**SUBJECT: REQUEST FOR PROPOSAL (RFP)-FAIRVIEW PARK MAINTENANCE,  
MANAGEMENT AND BIOLOGICAL SERVICES**

Dear Consultant:

The City of Costa Mesa is interested in receiving proposals for the services of a qualified consultant to perform maintenance, management and biological services for the 208-acre Fairview Park in the City of Costa Mesa located at 2525 Placentia Avenue, Costa Mesa, CA (Attachment A).

**I. INTRODUCTION**

Fairview Park is a 208-acre regional open space park consisting of various native habitat communities, trails, parking, restrooms, and a model train facility leased by the Orange County Model Engineers. The Public Services Department manages the maintenance and native habitat restoration of the park and facilities.

**A. General Goals:**

The City of Costa Mesa is seeking a consultant with a strong background in biological monitoring, native habitat establishment, park maintenance and public outreach. The successful consultant/contractor will be responsible for providing native habitat maintenance and monitoring services which includes quarterly biological reports and an annual report for submittal to Orange County Transportation Authority (OCTA) and other regulatory agencies (Attachment B), a vernal pool restoration program, various environmental studies, and public educational programs and tours. The contract period will cover January 1, 2017-January 1, 2019.

The City of Costa Mesa has completed four years of native habitat maintenance and monitoring for the Fairview Park Wetlands and Riparian Habitat Project in the lower northern portion of the park. 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. This contract includes Year Five biological reporting and an additional year for the 3-acre grassland and oak tree habitat.

**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.

**A mandatory pre-proposal meeting will be held on Tuesday, December 20, 2016, 10:00 a.m. at Fairview Park, 2525 Placentia Avenue, main parking lot.**

## **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 in separate sealed envelope.

**Please submit three copies of the project proposal by December 29, 2016, 4:00 p.m. to:**

**Baltazar Mejia, City Engineer  
City of Costa Mesa  
Public Services Department  
77 Fair Drive  
Costa Mesa, CA 92628**

**Contact 714.754.5291 for questions regarding this RFP.**

## **III. PROFESSIONAL SERVICES AGREEMENT**

- A. A sample of the required Professional Services Agreement is enclosed for your information (Attachment F). 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 G). 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-hardcopy and electronic quarterly photographic records for the 17-acre Fairview Park Wetlands site and final year five Biological Reports-hardcopy and electronic.
2. Quarterly Biological reports-hardcopy and electronic quarterly photographic records for the 3-acre grassland and oak tree restoration site, second year of contract.
3. On-site project manager twenty (20) hours per week monitoring Fairview Park for maintenance needs, vandalism, non-native plant issues in restoration areas, trespassing in restoration areas, six acre-wetlands and channel observation for issues with interrupted water flow, pump station functionality and non-native invasive species. Submit monthly reports.
4. Provide maintenance services for 3-acres of grasslands and oak trees and 2-acres of southern tarplant (Attachment C).
5. Up to Ten (10) hours per week implementing the Fairview Park Master Plan through grant writing, mitigation credits, and partnerships. Submit monthly reports.
6. Cowbird trapping program per United States Fish and Wildlife requirements (Attachment D)
7. Provide quarterly maintenance services for the wetland ponds, and channels. Clear ponds of excess cattails, bulrush and algae from the water surface and pond banks. Clear pond channel banks and maintenance paths of non-native habitat and excess willows (Attachment E).
8. Conduct four seasonal tours of Fairview Park open to the public and local schools. Bird nesting season tour, vernal pool tour, wetland and riparian habitat tour, Fairview Park history band informational tour.
9. Include a not to exceed amount of \$25,000 for various as-needed environmental studies and bird nesting surveys over the two-year term of the contract.
10. Develop a Monitoring Avian Productivity and Survivorship (MAPS) Program.
11. Consultation with city staff on a quarterly 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**





# 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>	\$40.00	LF	3,000	\$120,000	0	
<b>Manholes</b>	\$3,000	EA	5	\$15,000		
<b>Wetland pond concrete edge detail</b>					0	
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>	\$22,000	EA	7	\$154,000		
<b>Wetland Pond Slope Protection</b>	\$30	TON	2,800	\$84,000	0	
<b>Wetlands Pond Plantings</b>					0	
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		

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

<b>Temporary Irrigation</b>	\$100,000	LS	1	\$100,000	0	
<b>Plant Establishment &amp; Biologist Monitoring</b>	\$120,000	YEAR	1	\$120,000		1
<b>2<sup>nd</sup> Year</b>	\$60,000	YEAR	1		\$60,000	1
<b>3<sup>rd</sup>-5<sup>th</sup></b>	\$30,000	YEAR	3		\$90,000	3
<b>Maintenance</b>	\$35,000	YEAR	4		\$140,000	4
<b>Contingency</b>	\$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

- 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**

<b>Milestone</b>	<b>Assessment Criteria</b>	<b>Maintenance Action</b>
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>

*Poliophtila 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):

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

# ATTACHMENT C

## MAPS: MONITORING AVIAN PRODUCTIVITY AND SURVIVORSHIP

The MAPS Program is a continent-wide collaborative effort among public agencies, non-governmental groups, and individuals to assist the conservation of birds and their habitats through demographic monitoring. Since 1989, more than 1,200 MAPS stations spread across nearly every state and Canadian province have collected more than 2 million bird capture records. MAPS data provide insights into important questions such as:

- What factors drive avian population declines?
- Where are problems most acute, on the breeding or non-breeding grounds?
- What drives differences in trends between particular regions or habitats?
- What is the relationship between population change and weather, climate, or habitat loss?
- What can we do to reverse declines?

Most avian monitoring programs in effect today count or estimate numbers of birds to track changes in population size. Estimates of population trend are useful but limited in their capacity to reveal underlying causes of the trends. Demographic monitoring provides inferences about the life-stages of birds that may be most important in limiting population growth.

Examining key demographic parameters – often called **vital rates** -- especially productivity, recruitment, and survival, can enhance the effectiveness of conservation efforts so that limited conservation dollars can be directed at the life-cycle stage that actually limits the population.

MAPS uses a standardized, constant-effort protocol with a system of fine mesh nets to capture birds during the summer nesting season. Stations are run by independent banders; state, federal or U.S. government personnel; or by IBP under contract. MAPS operators band the birds and collect information on their age, sex, body condition, and reproductive status. Captured birds are given a lightweight, numbered aluminum leg band and released unharmed.

Subsequent recapture data provide information on survival, reproductive rates, and sometimes, movement patterns.

## **Cowbird Trapping Program**

The brown-headed cowbird (*Molothrus ater*) is an obligate brood parasite that lays one or more eggs in the nests of other species of birds. In some instances, adult cowbirds will destroy or remove eggs present in the nest before depositing their own eggs. The unrelated and unsuspecting adult hosts then raise the brown-headed cowbird young. Cowbird nestlings are often larger, develop more quickly, and are behaviorally more aggressive than nestlings of native species. As a result, cowbirds tend to outcompete their nest mates for food resources. This greatly reduces the reproductive output of the parasitized species, particularly for small bird species.

The City of Costa Mesa is recommended to conduct annual brown-headed cowbird trapping in the vicinity of Fairview Park. The specific objectives of the proposed trapping and removal program are to reduce the incidences of brood parasitism by the brown-headed cowbird on native, resident, and migratory passerine species within the vicinity of Fairview Park, including the federally listed California gnatcatcher (*Poliptila californica californica*) and the least Bell's vireo (*Vireo bellii pusillus*).

### **Scope of Services**

#### **Task 1. Trap Construction & Placement**

Cowbirds will be trapped using a modified Australian crow trap and decoy cowbirds. The Australian crow trap is routinely used by the USFWS to capture brown-headed cowbirds. Traps are approximately 6 feet tall, 8 feet long, and 6 feet wide, and are constructed of a wood frame covered with 1-inch mesh wire. Live decoy cowbirds will be placed inside the trap to attract resident cowbirds. A ratio of two male to three female decoys has been shown to be most effective at attracting cowbirds, especially females who can lay as many as 40 eggs in a single breeding season. The decoys produce social interaction within the traps, including courtship displays and vocalizations. These behaviors attract target birds within visual or audible range of the traps. To ensure no decoys escape or parasitize any nests, the right wing of all decoy birds will be clipped. Decoys will be obtained from a cowbird winter trapping program.

A single cowbird trap per 1-2 km of linear riparian habitat has been shown to sufficiently reduce or eliminate parasitism among a targeted host. Given the size of the habitat, we propose to use a single trap placed near the center the phase I riparian habitat planted in 2009. The trap will be placed adjacent to an exiting channel, which likely serve as movement corridor for cowbirds and beneath the canopy of a tree (e.g. sycamore) to insure the comfort of captive birds. Steps will also be taken to ensure the trap is not visible from any publically accessible areas including trails or lookouts.

To minimize the stress of decoy and captured birds, natural ground cover and foliage will be added to the trap. A thin layer of soil or grass will be scattered on the mesh floor of the trap to encourage decoy birds to forage, and branches and sticks will be propped along the walls to serve as perches. Shade cloth will also be attached to the west side of the trap to

protect captured birds from afternoon sun exposure. Wild birdseed and a 1-gallon water guzzler will be placed in the trap for nourishment.

## **Task 2. Trap Monitoring & Cowbirds Euthanization**

The trap will be monitored daily beginning March 15 through July 15, 2013, including holidays (122 days). If traps continue to capture cowbirds at a steady rate after July 15, however, trapping will resume until capture rates dropped sharply (e.g. no cowbirds were caught for five days in a row). The following data and information will be collected at each monitoring event:

1. Number, gender, and age of all captured cowbirds
2. Number and status of decoy birds
3. Number of cowbirds removed from the trap for euthanasia (different from #1 if some captured birds remained in the trap to serve as fresh decoys)
4. Number and condition of all non-target birds caught, listed by species
5. Overall condition of trap and recommended repairs
6. Weather conditions

After this information is collected, excess cowbirds will be removed for euthanasia and all non-target birds will be released. Traps will be inspected for proper function and structural integrity. Any damage to fencing and frame will be repaired immediately. Finally, food and water containers will be scrubbed, cleaned, and replenished.

## **Task 3: Reporting (Deliverables)**

An annual report will be prepared for each year of cowbird trapping. . Each report will describe the trapping method and summarize the outcome of the trapping effort, including the total number of cowbirds and non-target birds captured and/or killed over the trapping period. Reports will be prepared and submitted to the satisfaction of the City of Costa Mesa.

# ATTACHMENT E



-  Willow Scrub
-  Muje Fat Scrub
-  Sandbar Willow
-  Grassland
-  Coastal Sage Scrub
-  Aluvial Sand Coastal Sage Scrub
-  Oak Woodland
-  Wetland Vegetation
-  Retention pond
-  Channel with embankment
-  Project Limits
-  California Sycamore
-  Western Cottonwood
-  Mexican Elderberry
-  Oaks

400  
200  
0  
Feet

*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 A**  
**CITY'S REQUEST FOR PROPOSAL**

**EXHIBIT B**  
**RESPONSE AND SCOPE OF SERVICES**

**EXHIBIT C**  
**FEE SCHEDULE**

**EXHIBIT D**  
**PROJECT SCHEDULE**

**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 F**  
**CERTIFICATES OF INSURANCE**



# ATTACHMENT G

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/20/2016

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b>  <b>INSURED</b>	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): :5      FAX (A/C, No) E-MAIL ADDRESS:      .com <b>INSURER(S) AFFORDING COVERAGE</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER A:</td> <td style="width: 20%;">19445</td> </tr> <tr> <td>INSURER B:</td> <td>37885</td> </tr> <tr> <td>INSURER C:</td> <td>23841</td> </tr> <tr> <td>INSURER D:</td> <td>26387</td> </tr> <tr> <td>INSURER E:</td> <td>37540</td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER A:	19445	INSURER B:	37885	INSURER C:	23841	INSURER D:	26387	INSURER E:	37540	INSURER F:	
INSURER A:	19445												
INSURER B:	37885												
INSURER C:	23841												
INSURER D:	26387												
INSURER E:	37540												
INSURER F:													

**COVERAGES**      **CERTIFICATE NUMBER: 47154788**      **REVISION NUMBER:**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INBR LTR	TYPE OF INSURANCE	ADDL SUBR INSD: Y/N/D	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:		GL5341999	07/01/16	04/01/17	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		CA 4773667 (AOS) CA 4773668 (MA)	07/01/16	04/01/17	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		US00075712LI16A	07/01/16	04/01/17	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input checked="" type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N    N/A	WC022298274 (AOS) WC022298275 (CA)	07/01/16	04/01/17	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional & Pollution Liab		PBC019684300	07/01/16	04/01/17	Per Claim/Agg. 10,000,000
E	Excess Professional Liability		V1BAE9160101	07/01/16	04/01/17	Per Claim/Agg. 10,000,000
E	Excess Contract. Poll. Liab.		W1BB25160101	07/01/16	04/01/17	Per Claim/Agg. 10,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 The City of Costa Mesa is listed as an additional named insured under general liability and automobile liability policies where required by written contract. A waiver of subrogation in favor of the additional named insured shall apply and insurance shall be primary and non-contributory where required by written contract.

<b>CERTIFICATE HOLDER</b>  City of Costa Mesa  P.O. Box 1200  Costa Mesa, CA 92628  USA	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  
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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
<p>Any person or organization whom you become obligated to include as an additional insured as a result of any contract or agreement you have entered into.</p>	<p>Per the contract or agreement</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Any person or organization whom you become obligated to include as an additional insured as a result of any contract or agreement you have entered into.	Per the contract or agreement.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

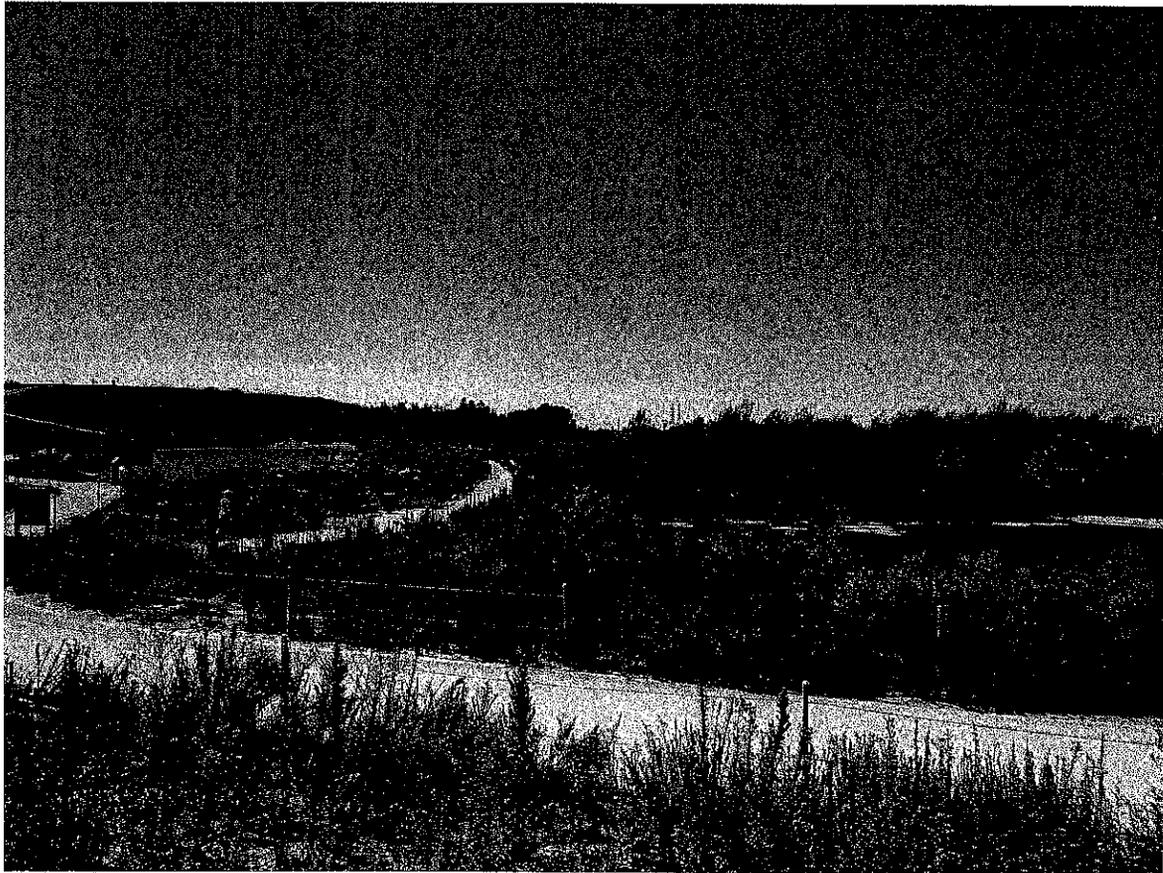
This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**EXHIBIT B**  
**CONSULTANT'S PROPOSAL**

# Endemic Environmental Services

City of Costa Mesa Biological Resource Management Proposal

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## Endemic Environmental Services

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Attn:  
Bart Mejia  
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 City of Costa Mesa Biological Management (RFP). Endemic has conducted a wide breadth of biological studies, surveys, land management, and biological consulting for the past 7 years for the City of Costa Mesa (City). Endemic has been committed to providing assistance with all biological resource issues at Fairview Park. These duties have included a large diversity of services including emergency on-call services of removing decomposed granite in vernal pools (including fairy shrimp monitoring), conducting water quality services, habitat restoration design, monitoring and consulting on the 40 acre Wetlands and Riparian Project, endangered species surveys for the least Bell's vireo and California gnatcatcher, wetland delineations, avian nest surveys, rare plant mapping, burrowing owl surveys, brown-headed cowbird trapping, monitoring and maintaining a 3 acre southern tarplant mitigation project, consulting with the United States Fish & Wildlife Service and California Department of Fish & Wildlife, consulting with Orange County Vector Control, and conducting daily inspections of Fairview Park and reporting any issues that may be of concern to the City. Over the past 7 years, Endemic has helped the City navigate through environmental issues for Fairview Park and intends to continue to assisting the City with providing consulting, habitat restoration, land management and education services so that the 208 acre nature park continues to enhance and thrive.

### **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 and land management for 10 years. He has experience conducting habitat restoration projects from San Luis Obispo County to San Diego County including San Clemente Island. He has 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



## Endemic Environmental Services

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Gambel's Watercress (*Nasturtium gambelii*) federally endangered  
Tecate Cypress (*Cupressus forbesii*) Rare Plant 1b.1  
Coastal Woolly Heads (*Nemacaulis denudata denudata*)  
Southern Island Mallow (*Lavatera assurgentifolia glabra*)

Additionally, Mr. Nerhus has a strong background in wildlife biology. He has a federal permit and approval to conduct and monitor for the least Bell's vireo and California gnatcatcher, which both occur onsite. He is also a lead expert in the biology of the western pond turtle in southern California and has a strong background in herpetology. 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.

### Crysta Dickson

Ms. Dickson has nearly 15 years' professional experience in wildlife biology working under various levels of private and public jurisdictions. Ms. Dickson's fieldwork and study provides her with a strong background in California flora and fauna that she effectively applies to her habitat assessments, plant and wildlife inventories, vegetation mapping and focused plant and wildlife surveys. Ms. Dickson has conducted numerous focused surveys and is permitted to conduct USFWS protocol presence/absence surveys for coastal California gnatcatcher, Quino checkerspot butterfly and fairy shrimp. She is also experienced in conducting least Bell's vireo habitat assessments and surveys, as well as nesting songbird surveys. She has assisted in the trapping and removal of the parasitic, non-native, brown-headed cowbird and the monitoring of occupied coastal California gnatcatcher, least Bell's vireo, southwestern willow flycatcher, fairy shrimp, and arroyo toad habitats. In addition to wildlife surveys, Ms. Dickson has also contributed to several sensitive plant surveys and vegetation mapping efforts throughout a variety of habitat types in California. Ms. Dickson is experienced in preparing technical biological resources assessments in accordance with CEQA and NEPA guidelines for a variety of projects in California. She has had experience with regulatory compliance and permitting procedures under Sections 401 and 404 of the Clean Water Act, Section 1600 of the State Fish and Game Code, Sections 7 and 10 of the Endangered Species Act, and Habitat Conservation Plans/Natural Community Conservation Plans.

Permits and Certifications (Bold are pertinent for Fairview Park)



## Endemic Environmental Services

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Federal endangered species recovery permit for the **California gnatcatcher, San Diego and Riverside fairy shrimp**, and Quino checkerspot butterfly. Ms. Dickson also has extensive experience with the least Bell's vireo, southwestern willow flycatcher, and arroyo toad. Additionally, she has a **California scientific collecting permit for rare plant surveys and collections and Brown-headed cowbird trapping authorization.**

Peter Bloom

Dr. Bloom has over 30 years experience managing and conducting biological resource projects in southern California. I have extensive experience banding birds and created and designed a MAPS station on Rancho Mission Viejo in Orange County. Furthermore, Dr. Bloom is authorized to band endangered species such as the California gnatcatcher and the least Bell's vireo, which is critical to have Federal and State approval to have a MAPS station with the presence of these species. His permits and authorizations include:

Permits and Certifications (Bold are pertinent for Fairview Park)

Federal endangered species recovery permit (TE-787376) for red-legged frog (including placement of transmitters and transponders), arroyo toad, **California gnatcatcher (including banding), least Bell's vireo (including banding)**, southwestern willow flycatcher (including banding), California least tern, snowy plover, peregrine falcon, bald eagle, and Swainson's hawk

**California scientific collecting permit and memorandum of understanding for all raptors**, including state-threatened Swainson's hawk, reptiles, amphibians, small mammals, and many additional species of birds, including state-threatened western yellow-billed cuckoo, California least tern, snowy plover, peregrine falcon, and bald eagle

**Federal Master Banding Permit No. 20431**

**Federal Bird Marking and Salvage Permit**

Predator Management Permit

Migratory Bird Relocation Permit (burrowing owl and other species)

**Brown-headed cowbird trapping authorization**

Desert Tortoise Council-approved for conducting desert tortoise monitoring surveys



## Endemic Environmental Services

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### **Deliverables to the City of Costa Mesa**

1. Quarterly Biological reports-hardcopy and electronic quarterly photographic records for the 17-acre Fairview Park Wetlands site and final year five Biological Reports-hardcopy and electronic.
2. Quarterly Biological reports-hardcopy and electronic quarterly photographic records for the 3 – acre grassland and oak tree restoration site, second year of contract.
3. Onsite project manager twenty (20) hours per week monitoring Fairview Park for maintenance needs, vandalism, non-native plant issues in restoration areas, trespassing in restoration areas, 6 acre wetlands and channel observation for issues with interrupted water flow, pump station functionality and non-native invasive species. Submit monthly reports.
4. Provide maintenance services for 3-acres of grasslands and oak trees and 2-acres of southern tarplant.
5. Up to ten (10) hours per week implementing the Fairview Park Master Plan through grant writing, mitigation credits, and partnerships. Submit monthly reports.
6. Cowbird trapping program per United States Fish and Wildlife requirements.
7. Provide quarterly maintenance services for the wetland ponds, and channels. Clear pond channels, bulrush and algae from the water surface and pond banks. Clear pond channels banks and maintenance paths of non-native habitat and excess willows.
8. Conduct four seasonal tours of Fairview Park open to the public and local schools. Bird nesting tour season tour, vernal pool tour, wetland and riparian habitat tour, Fairview Park history and informational tour.
9. Include a not to exceed amount \$25,000 for various as-needed environmental studies and bird nesting surveys over the two-year term of the contract.
10. Develop a Monitoring Avian Productivity and Survivorship (MAPS) Program
11. Consultation with city staff on quarterly basis.

### **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



## Endemic Environmental Services

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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.

Bart Mejia  
City Engineer  
City of Costa Mesa  
(949) 202-7279  
Years Completed: 1  
Cost: \$86,000

### 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.

Bart Mejia  
City Engineer  
City of Costa Mesa  
(949) 202-7279  
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



## Endemic Environmental Services

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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.

Bart Mejia

City Engineer

City of Costa Mesa

(949) 202-7279

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

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



## Endemic Environmental Services

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Project Navigator/OCRP – 3 acres of Southern Tarplant

Project Description: Managing and maintaining 3 acres of southern tarplant at Fairview Park

Years Completed: 2

Eric Zahn

(858) 353-6113

### 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

### Monthly Project Site Maintenance Schedule

After Endemic’s restoration ecologist assesses the site, a work crew will be adjusted to maintain the ‘real time’ challenge areas to ensure that the site recovers from any high dense weed area. During high density/frequency weed seasons (usually October through May), Endemic plans to have a minimum of 5 persons out onsite per day until the weeds are under control. Once the weeds are under control, Endemic will adjust the maintenance crew personnel level to 2-3 people per day 2-3 times per week. During low weed activities, a crew of 2-3 people will be on site once per week to ensure the irrigation is functioning and weed areas are abated.

Month	Weed Frequency	# Of Personnel	Hours /Day	Days/Week	Weeks/Month	Total Hours
May	High	5	8	5	5	1000
June	Medium	4	8	3	4	384
July	Low	2	8	1	5	80
August	Low	2	8	1	4	64
September	Low	2	8	1	4	64
October	Medium	3	8	2	5	240
November	High	4	8	3	4	384
December	High	4	8	3	5	480

Schedule of work based upon known weed cycles and phenology



## Endemic Environmental Services

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### **Litter Removal**

All noxious weed plant material will be removed from the project site so that weed seeds do not spread into the restoration site.

### **Plant Replacement**

Container Stock will be replaced based upon the success criteria of the project site to ensure project compliance. Once Endemic's restoration ecologist assesses the site and consults with the City of Costa Mesa. The most cost effective method of plant installation will be executed.

### **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.

### **Monitoring Avian Productivity and Survivorship Program (MAPS)**

Prepare a MAPS program for Fairview Park in the first year and implement the program in the second year. Under Endemic's team we have the appropriate personnel, who have the federal banding permits and experience with initiating MAPS stations in Orange County.

### **Onsite Management**

Endemic will provide an onsite project manager for maintenance needs, vandalism, non-native plant issues in restoration areas, trespassing in restoration areas, 6 acres of wetlands and channel observation issues with interrupted water flow, pump station functionality and non-native invasive species. This will also include grant writing and implementing the Fairview Park Master Plan.

### **As-needed Biological Studies**

Endemic has conducted a multitude of wildlife surveys for City of Costa Mesa for various events, emergency work, nesting surveys, endangered species monitoring and pre-construction surveys to aid in the continued maintenance of Fairview Park.

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

Sincerely,

Barry Nerhus, Jr.



## Endemic Environmental Services

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Endemic Environmental Services, Inc.  
Cell (714) 393-6249  
[bnerhus@endemicenvironmental.net](mailto:bnerhus@endemicenvironmental.net)

**EXHIBIT C**  
**FEE SCHEDULE**



## Endemic Environmental Services

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**Endemic Environmental Services, Inc.**  
**City of Costa Mesa Fairview Park Maintenance, Management and**  
**Biological Services**  
**Fee Proposal**  
**June 1, 2017-July 1, 2019**

### **Deliverables**

**Task 1 & 2** Lump Sum: 3 Quarterly Monitoring/Reporting & 1 Annual Monitoring/Reporting - \$23,440.00 per year

**Task 3, 5, & 11** Lump Sum Onsite Management - \$80,000.00 year 1, \$30,000 year 2.

**Task 4** Lump Sum Maintenance from July 1, 2017 – June 1, 2018 \$80,880.00. June 1 2018-July 1, 2019, \$40,880.

**Task 6** Lump Sum: Wildlife Mapping and Cowbird Trapping - \$15,000.00 per year

**Task 7** Lump Sum Quarterly Maintenance Service for Ponds and Maintenance Paths - \$20,000.00 per year

**Task 8** Lump Sum 4 Seasonal Tours - \$2,000.00 per year

**Task 9** Lump Sum: As-need Biological Studies - \$45,000.00 total for 2 years.

~~**Task 10** Lump Sum Monitoring Avian Productivity and Survivorship (MAPS) Program - \$30,000.00 per year optional~~

Total Cost Year 1 - **\$243,820.00**

Total Cost Year 2 - **\$153,820.00**

**Total 2-Year Cost – \$397,640.00**



## Endemic Environmental Services

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### Standard Rate Schedule- Environmental Services

Effective January 2017 through December 2018

<b>Professional Staff</b>	<b>Hourly Rates</b>
Principal	\$115.00
Project Manager	\$115.00
Restoration Ecologist	\$115.00
Fairy Shrimp Biologist	\$100.00
Senior Avian Biologist (for endangered species survey authorization)	\$100.00
Avian Biologist (general nest surveys)	\$85.00
Regulatory Permitting Specialist	\$90.00

<b>Support Staff</b>	<b>Hourly Rates</b>
Graphic Illustrator/GIS Conformance	\$65.00
Computer for CAD/GIS Application	\$65.00
Administrative Assistant	\$42.00
Intern	\$35.00
Labor Crew	\$35.00
Photo Copier – Black/White	\$0.10 per sheet
Photo Copier – Color	\$1.00 per sheet

### **General**

Consulting support (printing, reproduction and other direct expenses) will be billed at a rate of cost plus ten (10) percent. Automobile mileage will be charged at IRS standard rates. Travel time will be billed in the hourly rate schedule above. Authorized overtime for support staff will be billed at one and one (1.5) times the standard billing rate. Per diem shall be \$34.00 and hotel rate \$100.00 per night, if needed for multiple days.

Statements are payable upon receipt, and will be submitted monthly for work in progress and at completion of contracts obligations. Fee not paid within thirty (30) days of invoice date will be assessed an interest charge of one and one-half (1.5) percent per month, from the date due (net 30). Attorney fees and court costs incurred with collection of delinquent accounts will be borne by the client.

**EXHIBIT D**  
**PROJECT SCHEDULE**

## Annual Schedule

Quarterly Biological reports-hardcopy and electronic quarterly photographic records for the 17-acre Fairview Park Wetlands site and final year five Biological Reports-hardcopy and electronic:

March, June, September, December.

Quarterly Biological reports-hardcopy and electronic quarterly photographic records for the 3-acre grassland and oak tree restoration site, second year of contract.

March, June, September, December.

On-site project manager twenty (20) hours per week monitoring Fairview Park for maintenance needs, vandalism, non-native plant issues in restoration areas, trespassing in restoration areas, six acre-wetlands and channel observation for issues with interrupted water flow, pump station functionality and non-native invasive species.

Monthly reports.

Provide maintenance services for 3-acres of grasslands and oak trees and 2-acres of southern tarplant.

30 hours per week.

Ten (10) hours per week implementing the Fairview Park Master Plan through grant writing, mitigation credits, and partnerships. Monthly reports.

Cowbird trapping program per United States Fish and Wildlife requirements. Lump Sum.

Provide quarterly maintenance services for the wetland ponds, and channels. Clear ponds of excess cattails, bulrush and algae from the water surface and pond banks. Clear pond channel banks and maintenance paths of non-native habitat and excess willows

March, June, September, December.

Four seasonal tours of Fairview Park open to the public and local schools. Bird nesting season tour, vernal pool tour, wetland and riparian habitat tour, Fairview Park history and informational tours.

Not to exceed amount of \$25,000 for various as-needed environmental studies and bird nesting surveys over the two-year term of the contract. As needed.

Develop a Monitoring Avian Productivity and Survivorship (MAPS) Program. Lump sum.

Consultation with city staff on a quarterly basis.

March, June, September, December.

**EXHIBIT E**  
**CERTIFICATES OF INSURANCE**



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY -  
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The following is added to Paragraph H. **Other Insurance** of **Section III - Common Policy Conditions** and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

1. The additional insured is a Named Insured under such other insurance; and

2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



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of 160

109

4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that are not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

**J. Premium Audit**

1. This policy is subject to audit if a premium designated as an advance premium is shown in the Declarations. We will compute the final premium due when we determine your actual exposures.
2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
3. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

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

1. Applicable to Businessowners Property Coverage:  
If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:
  - a. Prior to a loss to your Covered Property.

- b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:

- (1) Someone insured by this insurance;
- (2) A business firm:
  - (a) Owned or controlled by you; or
  - (b) That owns or controls you; or
- (3) Your tenant.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

**2. Applicable to Businessowners Liability Coverage:**

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

**L. Transfer Of Your Rights And Duties Under This Policy**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BUSINESSOWNERS LIABILITY EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESSOWNERS COVERAGE FORM

Below is a summarization of the coverages provided by this endorsement. No coverages are given by this summary. Actual coverage descriptions are within this endorsement.

<u>SECTION</u>	<u>SUBJECT</u>
A.	Supplementary Payments Bail Bonds Loss Of Earnings
B.	Broadened Coverage For Damage To Premises Rented To You
C.	Incidental Medical Malpractice Injury
D.	Mobile Equipment
E.	Blanket Additional Insured (Owners, Contractors Or Lessors)
F.	Newly Formed Or Acquired Organizations
G.	Aggregate Limits
H.	Duties In The Event Of Occurrence, Offense, Claim Or Suit
I.	Liability And Medical Expenses Definitions Bodily Injury Insured Contract Personal And Advertising Injury

Section II - Liability is amended as follows:

#### A. Supplementary Payments

Section A.1. Business Liability is modified as follows:

1. The \$250 limit shown in Paragraph A.1.f.(1)(b) Coverage Extension - Supplementary Payments for the cost of bail bonds is replaced by a \$3,000 limit.
2. The \$250 limit shown in Paragraph A.1.f.(1)(d) Coverage Extension - Supplementary Payments for reasonable expenses and loss of earnings is replaced by a \$500 limit.

#### B. Broadened Coverage For Damage To Premises Rented To You

1. The last paragraph of Section B.1. Exclusions - Applicable To Business Liability Coverage is replaced by the following:

With respect to the premises which are rented to you or temporarily occupied by you with the permission of the owner, Exclusions c., d., e., g., h., k., l., m., n. and o. do not apply to "property damage".

2. Paragraph **D.2. Liability And Medical Expenses Limits Of Insurance** is replaced by the following:

The most we will pay under this endorsement for the sum of all damages because of all "property damage" to premises while rented to you or temporarily occupied by you with the permission of the owner is the Limit of Insurance shown in the Declarations.

3. Paragraph **D.3. Liability And Medical Expenses Limits Of Insurance** does not apply.

**C. Incidental Medical Malpractice Injury**

1. Paragraph (4) under Paragraph **B.1.j. Exclusions - Applicable To Business Liability Coverage - Professional Services** does not apply to "Incidental Medical Malpractice Injury" coverage.

2. With respect to this endorsement, the following is added to Section **F. Liability And Medical Expenses Definitions**:

a. "Incidental Medical Malpractice Injury" means bodily injury arising out of the rendering of or failure to render, during the policy period, the following services:

- (1) Medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
- (2) The furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

b. This coverage does not apply to:

- (1) Expenses incurred by the insured for first-aid to others at the time of an accident and the Duties in the Event of Occurrence, Offense, Claim or Suit Condition is amended accordingly.
- (2) Any insured engaged in the business or occupation of providing any of the services described under a. above.
- (3) Injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under a. above.

**D. Mobile Equipment**

Section **C. Who Is An Insured** is amended to include any person driving "mobile equipment" with your permission.

**E. Blanket Additional Insured (Owners, Contractors Or Lessors)**

1. Section **C. Who Is An Insured** is amended to include as an insured any person or organization whom you are required to name as an additional insured on this policy under a written contract or written agreement. The written contract or agreement must be:

- a. Currently in effect or becoming effective during the term of this policy; and
- b. Executed prior to the "bodily injury", "property damage", or "personal and advertising injury".

2. The insurance afforded to the additional insured is limited as follows:

- a. The person or organization is only an additional insured with respect to liability arising out of:
  - (1) Real property, as described in a written contract or written agreement, you own, rent, lease, maintain or occupy; and
  - (2) Caused in whole or in part by your ongoing operations performed for that insured.
- b. The Limit of Insurance applicable to the additional insured are those specified in the written contract or written agreement or the limits available under this policy, as stated in the Declarations, whichever are less. These limits are inclusive of and not in addition to the Limit of Insurance available under this policy.
- c. The insurance afforded to the additional insured does not apply to:
  - (1) Liability arising out of the sole negligence of the additional insured;
  - (2) "Bodily injury", "property damage", "personal and advertising injury", or defense coverage under the Supplementary Payments section of the policy arising out of an architect's, engineer's or surveyor's rendering of or failure to render any professional services including:



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280

of 180

131

- (a) The preparing or approving of maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
  - (b) Supervisory, inspection, architectural or engineering activities.
- (3) Any "occurrence" that takes place after you cease to be a tenant in the premises described in the Declarations; or
- (4) Structural alterations, new construction or demolition operations performed by or for the person or organization designated in the Declarations.
3. Any coverage provided hereunder shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a contract specifically requires that this insurance be primary or you request that it apply on a primary basis.

**F. Newly Formed Or Acquired Organizations**

The following is added to Section **C. Who Is An Insured:**

Any business entity acquired by you or incorporated or organized by you under the laws of any individual state of the United States of America over which you maintain majority ownership interest exceeding fifty percent. Such acquired or newly formed organization will qualify as a Named Insured if there is no similar insurance available to that entity. However:

- 1. Coverage under this provision is afforded only until the 180th day after the entity was acquired or incorporated or organized by you or the end of the policy period, whichever is earlier;
- 2. Section **A.1. Business Liability** does not apply to:
  - a. "Bodily injury" or "property damage" that occurred before the entity was acquired or incorporated or organized by you; and
  - b. "Personal and advertising injury" arising out of an offense committed before the entity was acquired or incorporated or organized by you.
- 3. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

**G. Aggregate Limits**

The following is added to Paragraph **D.4. Aggregate Limits Liability and Medical Expenses Limits Of Insurance:**

- 1. The Aggregate Limits apply separately to each of the "locations" owned by or rented to you or temporarily occupied by you with the permission of the owner.
- 2. The Aggregate Limits also apply separately to each of your projects away from premises owned by or rented to you.

For the purpose of this endorsement only, "location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

**H. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- 1. Paragraph **E.2.a. Duties In The Event Of Occurrence, Offense, Claim Or Suit Liability And Medical Expenses General Condition** applies only when the "occurrence" is known to any insured listed in Paragraph **C.1. Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim.
- 2. Paragraph **E.2.b. Duties In The Event Of Occurrence, Offense, Claim Or Suit Liability And Medical Expenses General Condition** will not be considered breached unless the breach occurs after such claim or "suit" is known to any insured listed under Paragraph **C.1. Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim.

I. Section F. Liability And Medical Expenses Definitions is modified as follows:

1. Paragraph F.3. is replaced by the following:

3. "Bodily Injury" means bodily injury, sickness, disease, or incidental medical malpractice injury sustained by a person, and includes mental anguish resulting from any of these; and including death resulting from any of these at any time.

2. Paragraph F.9. is replaced by the following:

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

3. Paragraph F.14.b. Personal And Advertising Injury is replaced by the following:

- b. Malicious prosecution or abuse of process;

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of 160

133

# CERTIFICATE OF INSURANCE

This certificate is issued for informational purposes only. It certifies that the policies listed in this document have been issued to the Named Insured. It does not grant any rights to any party nor can it be used, in any way, to modify coverage provided by such policies. Alteration of this certificate does not change the terms, exclusions or conditions of such policies. Coverage is subject to the provisions of the policies, including any exclusions or conditions, regardless of the provisions of any other contract, such as between the certificate holder and the Named Insured. The limits shown below are the limits provided at the policy inception. Subsequent paid claims may reduce these limits.

<b>Certificate Holder:</b> CITY OF COSTA MESA 77 FAIR DR COSTA MESA, CA 92626-6520	<b>Named Insured:</b> ENDEMIC ENVIRONMENTAL SERVICES, INC PO BOX 2363 HUNTINGTON BEACH CA 92647-0363
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Automobile Liability			
<b>Insurer Name:</b> Allstate Insurance Company			
<b>Policy Number:</b> 648279774			
<input type="checkbox"/> 1 – Any Auto	<input type="checkbox"/> 2 – Owned Autos Only	<input type="checkbox"/> 3 – Owned Priv. Pass. Autos Only	
<input type="checkbox"/> 4 – Owned Autos Other Than Priv. Pass. Autos Only	<input type="checkbox"/> 5 – Owned Autos Subject to No Fault	<input type="checkbox"/> 6 – Owned Autos Subject to a Compulsory UM Law	
<input checked="" type="checkbox"/> 7 – Specifically Described Autos	<input checked="" type="checkbox"/> 8 – Hired Autos Only	<input checked="" type="checkbox"/> 9 – Non-owned Autos Only	
<b>Policy Effective Date:</b> 04-10-2016		<b>Policy Expiration Date:</b> 04-10-2017	
<b>Limits Of Insurance:</b>	\$ 1,000,000		Combined Single Limit (each accident)
	BI Per Person	BI Per Accident	PD Per Accident
<b>Description of Operations/Locations/Vehicles/Endorsements/Special Provisions</b>			

<b>Interested Party Type:</b> CERTIFICATE HOLDER  THIS CERTIFICATE DOES NOT GRANT ANY COVERAGE OR RIGHTS TO THE CERTIFICATE HOLDER. IF THIS CERTIFICATE INDICATES THAT THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED, THE POLICY(IES) MUST EITHER BE ENDORSED OR CONTAIN SPECIFIC LANGUAGE PROVIDING THE CERTIFICATE HOLDER WITH ADDITIONAL INSURED STATUS. THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED ONLY TO THE EXTENT INDICATED IN SUCH POLICY LANGUAGE OR ENDORSEMENT.
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**EXHIBIT F**

**CITY COUNCIL POLICY 100-5**

## CITY OF COSTA MESA, CALIFORNIA

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

### COUNCIL POLICY

#### 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;
  - B. Establishing a Drug-Free Awareness Program to inform employees about:

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

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.