

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

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 1st day of April, 2024 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and EEC ENVIRONMENTAL, a California corporation ("Consultant").

RECITALS

A. City proposes to utilize the services of Consultant as an independent contractor to provide engineering services for the design of an aboveground fueling system at Fire Station 3, as more fully described herein; and

B. 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. City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. 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 Consultant's Proposal, attached hereto as Exhibit "A" and incorporated herein.

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. 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 on page four of Consultant's Proposal under the heading "2024 Fee Schedule." Consultant's total compensation shall not exceed Twenty-Four Thousand and Five Hundred Dollars (\$24,500.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City Manager or designee, 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. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. 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, pandemics (excluding COVID-19), material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party (each, a "Force Majeure Event"). If a party experiences a Force Majeure Event, the party shall, within five (5) days of the occurrence of the Force Majeure Event, give written notice to the other party stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect. Any suspension of performance shall be of no greater scope and of no longer duration than is reasonably required and the party experiencing the Force Majeure Event shall use best efforts without being obligated to incur any material expenditure to remedy its inability to perform; provided, however, if the suspension of performance continues for sixty (60) days after the date of the occurrence and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure Event, the parties shall meet and discuss in good faith any amendments to this Agreement to permit the other party to exercise its rights under this Agreement. If the parties are not able to agree on such amendments within thirty (30) days and if suspension of performance continues, such other party may terminate this Agreement immediately by written notice to the party experiencing the Force Majeure Event, in which case neither party shall have any liability to the other except for those rights and liabilities that accrued prior to the date of termination.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and end on March

31, 2025, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by two [2] additional one [1] year periods 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 A.M. Best's 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) per occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.
- (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 limit per accident 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.

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:

EEC Environmental
1 City Blvd. West, Suite 1800
Orange, CA 92868
Tel: (714) 667-2300
Attn: John Shaffer, CEO

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5688
Attn: Patrick Bauer

Courtesy copy to:

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

6.5. Drug-Free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "B" and incorporated herein. 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 negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in the performance 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 negligence, recklessness, or willful misconduct in 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. In no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. 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 Conflicts with Independent Contractor. Contractor/consultant's duties and services under this Agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering into this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor/consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor/consultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this Agreement.

6.12. 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.

6.13. 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.

6.14. 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.

6.15. 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.

6.16. 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.

6.17. 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.

6.18. Prohibited Employment. Consultant will not employ any regular employee of City

while this Agreement is in effect.

6.19. 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.

6.20. 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.

6.21. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.22. 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.

6.23. 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.

6.24. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. 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.

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

6.26. 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.

6.27. 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.

6.28. 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.

6.29. 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 appear on following 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



John Shaffer, CEO

Date: 4/22/24

CITY OF COSTA MESA



Carol Molina
Finance Director

Date: 4/24/24

ATTEST:

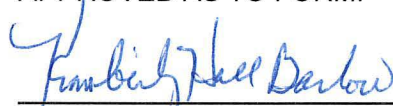


Brenda Green
City Clerk



Date: 5/9/2024

APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

Date: 5/7/24


APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 4/24/24

APPROVED AS TO CONTENT:



Patrick Bauer
Project Manager

Date: 4-24-24

DEPARTMENTAL APPROVAL:



Raja Sethuraman
Director of Public Works

Date: 4-25-24

EXHIBIT A
CONSULTANT'S PROPOSAL



Corporate Office
Tel: (714) 667-2300
Fax: (714) 667-2310
One City Boulevard West, Suite 1800
Orange, California 92868
www.eecenvironmental.com

March 22, 2024

Mr. Patrick Bauer
Deputy Public Works Director
City of Costa Mesa – Public Works Department
77 Fair Drive
Costa Mesa, CA 92626

Subject: Proposal to provide engineering services
for the design of an aboveground fueling system at Fire Station 3

Dear Mr. Bauer,

Pursuant to the City of Costa Mesa's (City) request, EEC Environmental (EEC) has prepared this proposal to provide engineering services for the design of an aboveground fueling system at Fire Station 3 located at 1865 Park Avenue in Costa Mesa, California.

Based on email and phone conversations between EEC and Mr. Bauer, EEC understands the proposed scope of work to generally include the following:

- Design of a 1,500 – 2,000 gallon diesel Aboveground Storage Tank (AST)
- Design of one fuel dispenser
- Accommodations for the design and installation of a canopy under separate contract and permit (i.e., deferred submittal)
- Rough Order of Magnitude (ROM) cost estimate for construction of proposed system
- Contractor bidding assistance

EEC understands that the previous underground storage tanks, underground piping, and dispensers on site have been removed under a previous contract and the City has received a No Further Action (NFA) letter for that system.

PROPOSED SCOPE OF WORK

The proposed scope of work consists of the following tasks:

ENGINEERING DESIGN

EEC will provide engineering design services as required by City, and/or Orange County Fire Authority (OCFA) requirements. The items listed below to be completed under this task are based upon previous experience:

- Demolition Plan – Delineate the surface improvements and utilities to be removed in preparation for the proposed improvements.
- Site Plan – Shows existing conditions and proposed improvements. Shows elevations for Planning Department review and approval.



- Identifies anticipated canopy location and extents. However, the design of the proposed canopy is not a part of this scope and is assumed to be defined within a deferred submittal under separate permit as a part of the construction contract.
- Grading Plan – Shows grading, pavement, ADA improvements, storm drainage improvements, and earthwork.
 - Associated details for site improvements including, but not limited to: paving details, trenching details, ADA details, fueling equipment (tank, dispenser, sump, E-stop, piping, bollards), and fuel equipment specification list.
 - Improved area must be regraded to provide a grade break that prevents run-on of stormwater from the rest of the site to the extent practicable. The area around the fuel dispensers will be sloped to a central point with a collection drain and sump to collect any spills, washdown water, etc.
- Erosion and Sediment Control Plan – Depicts temporary stormwater best management controls during construction.
- Electrical Plan – Single line diagram, panel schedules, conduit plans, area classification plan.

EEC assumes that the total area of ground disturbance will not exceed 1 acre, therefore a site-specific construction SWPPP is not required. Additionally, EEC assumes that the total area of impervious surface replacement or additional will not exceed 5,000 ft², therefore stormwater controls and treatment (LID/BMP) is not required.

EEC will mobilize for one site visit to observe and document existing conditions, perform verification topo survey as necessary, and discuss project scope and proposed improvements with site and City personnel. Additional field mobilizations may result in additional fees.

ROUGH ORDER OF MAGNITUDE (ROM) COSTING

Upon completion of design and acceptance of design considerations by the City of Costa Mesa and any other project stakeholders, EEC will provide the City with an engineer's Rough Order of Magnitude (ROM) cost estimate for the sole purpose of approximating the construction cost of the proposed project.

EEC will use their best professional judgement to develop the ROM cost. However, EEC makes no guarantees that contractor bids/quotes will fall within a given percentage of the provided ROM cost.

BIDDING ASSISTANCE

EEC will provide the City with assistance in developing a scope of work for the construction scope of work. EEC will assist the City in answering contractor questions during the bidding phase and provide additional details/clarification as needed to facilitate fair and qualified bidding. However, it is assumed that City personnel will lead the efforts in developing a Request for Proposal (RFP) and associated bidding documents.

FEE ESTIMATE

EEC will provide the aforementioned scope of work at a cost of **\$24,500** on a time-and-expenses basis per the attached EEC Fee Schedule and Terms and Conditions, which is not to be exceeded without written authorization from the City of Costa Mesa. Payment terms are Net 30 days. If additional work is required, EEC will notify the City of Costa Mesa for approval prior to proceeding.

Mr. Bauer



If this proposal request meets with your approval, please acknowledge acceptance of the same and initiate authorization to proceed by signing and faxing a copy of this document to 714-667-2310 or scanning and e-mailing a signed copy to wshaffer@eecenvironmental.com.

Thank you again for the opportunity to provide the City of Costa Mesa with these professional services. Please email me at wshaffer@eecenvironmental.com or call me at (949) 309-7635 if you have any questions.

Sincerely,
EEC Environmental

Will Shaffer, PE, QISP, QSD
Project Engineer II

Attachments: 2024 EEC Environmental Rate Schedule
Standard Terms and Conditions

ASSUMPTIONS/EXCLUSIONS:

This proposal assumes the following:

- 1) A site-specific geotechnical report will be provided to EEC by the City.
- 2) Existing site plans and utility as-built drawings will be provided to EEC by the City, if available.
- 3) Limited topographic survey is included in this proposal for the purposes of verifying existing conditions with site as-built drawings. If a full site topographic survey is necessary, additional fees may be needed.
- 4) Water Quality Management Plan (WQMP) is not included.
- 5) Stormwater LID/BMP design is not anticipated to be required and not included.
- 6) EEC is not responsible for contractor means and methods.
- 7) A separate construction specification document is not included. Site improvement specifications will be called out as necessary within the construction documents.
- 8) Existing site utilities (i.e., electrical, storm drain) have sufficient capacity for the proposed condition and do not require upgrades or coordination with utility providers.

ACCEPTANCE

If the proposed scope of work, cost estimate, and payment terms stated herein meet with your approval, please acknowledge acceptance of same and initiate authorization to proceed by signing and faxing a copy of this document to (714) 667-2310 or scanning it and e-mailing it to wshaffer@eecenvironmental.com.

Print Name _____

Print Title _____

Signature _____

Date _____



2024 Fee Schedule

PERSONNEL CHARGES

The charge for all time required for the performance of the Scope of Work, including office, field and travel time, will be billed at the hourly rate according to the labor classifications set forth below:

Labor Classification	Hourly Rate
Jr. Staff Engineer/Geologist/Scientist	\$145
Staff Engineer/Geologist/Scientist	\$175
Sr Staff Engineer/Geologist/Scientist	\$190
Project Engineer/Geologist/Scientist - I	\$220
Project Engineer/Geologist/Scientist - II	\$230
Sr Project Engineer/Geologist/Scientist - I	\$250
Sr Project Engineer/Geologist/Scientist - II	\$270
Principal Engineer/Geologist	\$295
Principal	\$295
Project Assistant	\$135
Technician	\$140
Drafter	\$150
Sr Technician	\$155
Compliance Inspector	\$155
Technician GIS/Technology	\$135
Analyst GIS/Technology	\$150
Sr Analyst GIS/Technology	\$165
Specialist GIS/Technology	\$175
Sr Specialist GIS/Technology	\$190
Supervisor GIS/Technology	\$205
Director/GIS Technology	\$220
Construction Technician	\$120
Construction Field Supervisor	\$140
Construction Manager	\$150
Sr Construction Manager	\$185
Technical Editor	\$135

Emergency response will be charged at a rate of 1.5 times the standard hourly rate.

When EEC Staff appear as expert witnesses at court trials, mediation, arbitration hearings and depositions, their time will be charged at 2.0 times the standard rate. All time spent preparing for such trials, hearings, and depositions, will be charged at the standard hourly rate.

Travel

Vehicles used on project assignments will be charged at \$125 per day. Mileage is billed at the current rate established by the Internal Revenue Service plus mark up. Per Diem is billed at a cost of \$95 per day (except in high cost markets, which will adhere to GSA rates). Airfare, lodging, rental cars and associated expenses are billed at cost plus 15%.

Field Equipment

Field Equipment is billed at standard unit costs. Rate schedules are available upon request.

Subcontractors and Reimbursables

The costs of subcontractors, materials, equipment rental and costs incurred will be charged at cost plus 15%.

Other Project Charges

The cost of additional report reproduction and special project accounting will be billed as appropriate. Plotting plans are charged by size, black and white or color, and by the number of copies supplied.

Shipping and Postage

Shipping charges include couriers and the postage necessary will be charged at cost plus 15%.

Interest Charges

Interest on late payments will be charged at the rate of 1.5% per month.

Payment Terms

Net 30 days applies to all work performed and invoiced unless superseded by a specific executed contract. An administration fee of 3.5% will be added to any invoice where payment is made by credit card.

EEC ENVIRONMENTAL
Standard Terms and Conditions

1. **TERM OF AGREEMENT:** The term of this Agreement shall commence on the above date and shall continue in effect until the project is completed or terminated by either party having given seven (7) days written notice to the other party.
2. **SERVICES TO CLIENT:** EEC shall render consulting or construction services, as agreed. If, in the course of the project, work beyond the scope of the proposal is requested, or if unforeseen conditions arise, EEC will notify CLIENT of the change in scope of the project and, if CLIENT agrees to such changes in writing, EEC shall undertake the additional work. Unless otherwise negotiated, additional work shall be billed according to EEC's Current Fee Schedule.
3. **PAYMENT:** EEC shall submit monthly progress invoices to CLIENT. CLIENT agrees to pay EEC within thirty (30) days of the date of the invoice. Overdue payments will be charged interest at the rate of 1.5% monthly (18% annually) until payment and interest is paid in full.
4. **SUSPENSION OF WORK:** In the event all or any portion of the work prepared or partially prepared by EEC be suspended, abandoned, or terminated, CLIENT shall pay EEC only for the work performed.
5. **EEC'S RESPONSIBILITIES:** EEC shall be solely responsible for: a) completion of the project in accordance with the proposal; b) direct supervision of EEC's employees and subcontractor's on project site; c) prompt notification to CLIENT of any dangerous, adverse, or unusual conditions encountered at the site; d) obtaining and maintaining proper licenses for EEC's work; e) damage to the property due to EEC's or its subcontractor's negligence; f) compliance with laws and regulations pertaining to EEC's employees' wages, hours, fair employment practices, worker's compensation insurance, and similar employer responsibilities. EEC understands that access to the site shall only be during normal working hours.
6. **CLIENT'S RESPONSIBILITIES:** CLIENT shall be solely responsible for: a) maintaining overall supervision of the project beyond the immediate scope of EEC's work; b) all applicable permits beyond the scope of EEC's work; c) making available to EEC all of CLIENT'S information regarding existing and proposed conditions of the site including, but not be limited to: plot plans and as-built drawings. CLIENT will immediately transmit to EEC any new information which becomes available or any change in plans; d) providing reasonable access to the site for all necessary equipment and personnel during normal working hours;
7. **INDEMNIFICATION:** CLIENT agrees to indemnify, defend and hold EEC harmless from and against all claims or actions, based upon or arising out of injuries to persons or property, caused by the errors, omissions or negligence of CLIENT or its agents, subcontracts or employees in performance of services hereunder.

EEC agrees to indemnify, defend and hold CLIENT and its members, shareholders, partners, directors, affiliates, agents, officers, employees, assignees, tenants, transferees and nominees harmless from and against any and all claims, damages, demands, liens, claims or liens, losses, actions, or liability of any kind or nature whatsoever, which they may sustain, incur, or be subjected to, or which may be imposed on them, including, without limit, reasonable attorney's fees and litigation costs to the extent arising directly or indirectly, in whole or in part out of, or

in connection with: (a) any acts, errors or omissions or willful misconduct of EEC or its personnel in performing the services and work hereunder, including, without limit, damage to any property or injury to or death of any person(s); (b) acts, non-performance or breach by EEC's personnel or material duties, obligations or representations under this Agreement; and (c) acts, non-performance or breach by EEC of material duties, obligations or requirements under the Access and Indemnity Agreement by and between EEC and CLIENT and incorporated herein by reference.

8. INDEPENDENT AGENT: Each party shall be an independent agent with respect to all work under this Agreement, and shall not be deemed to be the servants, employees, or agents of the other.
9. INSURANCE: EEC shall provide insurance at a minimum in accordance with the following for the duration of the project. EEC shall name CLIENT as additional insured. EEC shall provide CLIENT with a copy of EEC's certificate of insurance prior to commencement of the services and work herein, listing CLIENT as additional insured as follows: (a) worker's compensation per the statutory limits; (b) employer's liability of \$1,000,000 per occurrence; (c) commercial liability, including contractual liability, property damage, bodily injury and death of \$5,000,000 per occurrence, \$5,000,000 annual aggregate; (d) automobile liability of \$1,000,000 combined single limit; and (e) professional errors and omissions of \$5,000,000 per claim.
10. AMENDMENT: This Agreement may be amended by mutual consent of the parties in writing to be attached hereto and incorporated herein, executed by EEC and CLIENT's representative.
11. CONFIDENTIALITY: All CLIENT information will be considered confidential and will only be released upon written approval from CLIENT.
12. ENTIRE AGREEMENT: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties relating to the subject matter of this Agreement and is the entire understanding and agreement related thereto.
13. GOVERNING LAW: The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California.
14. LEGAL CONSTRUCTION: In the event provisions contained in this Agreement shall for any reason be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
15. ATTORNEY FEES: Should it be necessary for either party to initiate legal proceedings to enforce any term or condition of this Agreement, the prevailing party shall be entitled to all costs and expenses, including reasonable attorneys' and consultants' fees incurred in such proceedings. For purposes of this Agreement, the term "attorney's fees" shall include the fees and expenses of counsel to the parties hereto, which may include printing, photo-stating, duplication and other expenses, air freight charges and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney.

EXHIBIT B

CITY COUNCIL POLICY 100-5

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

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;
 - 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.