

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

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 15th day of April, 2024 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and SITESCAPES, INC., a California corporation ("Consultant").

RECITALS

A. City proposes to utilize the services of Consultant as an independent contractor for the redesign of Neth Park located on Fair Drive and Vanguard Way, 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," 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 in Article 4 of Consultant's Proposal under the heading "Compensation and Payments." Consultant's total compensation shall not exceed Twenty-Five Thousand Dollars (\$25,000.00).

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 continue for a period of one year, ending on April 14, 2025, 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 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:

Sitescapes, Inc.
3190 B Airport Loop Drive
Costa Mesa, CA 92626
Tel: (949) 644-9370
Attn: Scott Shoup

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-7499
Attn: Robert Ryan

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 "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.

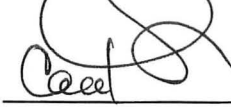
CONSULTANT



Signature
Scott Sharp - Partner
[Name and Title]

Date: 5.24.24

CITY OF COSTA MESA



Carol Molina
Finance Director

Date: June 5, 2024

ATTEST:



Brenda Green
Brenda Green
City Clerk

Date: 7/9/2024

APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

Date: 7/3/24

APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 6/5/24


APPROVED AS TO CONTENT:



Robert Ryan
Project Manager

Date: June 5, 2024

DEPARTMENTAL APPROVAL:

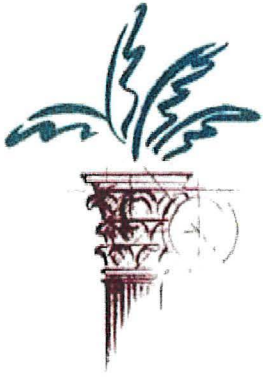


Raja Sethuraman
Public Works Director

Date: 6-26-24

EXHIBIT A

CONSULTANT'S PROPOSAL



SITESCAPES

March 26, 2024

Robert Ryan
Manager, Maintenance Services Division
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Project: Neth Art Park

Dear Rob,

We are pleased to submit this proposal for Professional Services in connection with the redesign of Neth Park located on Fair Drive and Vanguard Way in the city of Costa Mesa.

AGREEMENT BETWEEN CLIENT AND LANDSCAPE ARCHITECT

This Agreement is between City of Coast Mesa (Client) located at 77 Fair Drive, Costa Mesa, California 92626 and SITESCAPES, Inc. (Landscape Architect) located at 3190 B-2 Airport Loop Drive, Costa Mesa, California 92626 for the above-referenced Project.

ARTICLE 1: SCOPE OF WORK

Based the site visit and subsequent conversation, SITESCAPES shall prepare preliminary design drawings for approval and construction documents for the above noted park site. It is noted that the park site is existing, and modifications will be required. These modifications are to include but are not limited to:

- Create the opportunity for art elements to be displayed.
- Adding "Costa Mesa" sign element at or near the corner of Fair and Vanguard.
- Creating a "walking path" that will access existing unique features and new opportunities.
- Create a "Butterfly Garden" along the south edge.

A. Landscape Architect agrees to provide Client the following Basic Services:

1. Project Coordination and Meetings
2. Preliminary Landscape Plan
3. Construction Documents
4. Construction Administration

1. Phase 1 – Project Coordination and Meetings:

Upon approval of the proposal from Client, SITESCAPES, Inc. shall proceed to interact with other project consultants including the Civil Engineer, Project Architect and Governing Agencies. The intent is to have SITESCAPES, Inc. develop and create Landscape Architectural drawings that will illustrate specific solutions used to attain the ultimate project goals.

*Landscape
Architecture
& Planning*

*SITESCAPES, Inc.
3190 B Airport Loop Drive
Costa Mesa, CA 92626
949-644-9370 x
714-230-3140 f*

This phase of work shall include the following:

- a. Provide a site visit to inventory existing elements on site to better prepare a comprehensive base sheet.
- b. Assemble provided and gathered information to create an accurate comprehensive AutoCAD "Site Plan" base sheet. This base sheet will provide an up-to-date background which will be used to expose any conflicts and help minimize any future landscape restraints.
- c. Attend and participate in project team meetings and consultant coordination meetings as required or as deemed necessary by Client. It is assumed that this project will require (1) one half-hour meeting every other week until project approval.
- d. Attend city meetings and presentations as required.

2. Phase 2 – Preliminary Landscape Plan:

Sitescapes shall proceed to analyze, review and help define project's "opportunities and constraints." The focus shall be on Site layout and landscape issues, with a final goal of creating a site plan suitable for design team to prepare a preliminary plan.

This phase of work shall include the following:

- a. Discuss with representatives from Client to review project theme, site amenities, landscape maintenance and cost budgeting concerns.
- b. Prepare conceptual schematic Site Plan sketches identifying the following design elements.
 1. Central Art Space – *opportunity to display a variety of different sized art pieces in a permanent manner. {Excludes actual art element/selection}*
 2. "Costa Mesa" sign – *generate an artistic concept based on the letters in "Costa Mesa"*
 3. Art Path – *provide a connective pathway that will open up the park to visitors to enjoy the new and existing elements the park has to offer*
 4. "Butterfly Garden" – *develop an interactive garden that is centered around attracting butterflies for both entertainment and educational purposes*
- c. Review with Client conceptual schematic sketches and provide modifications as necessary.
{Note: These sketches will be very informal as they will only be used to develop communication between us.}
- d. Develop a schematic Site Plan at 20-scale, based upon approved schematic sketches that will illustrate the proposed landscape goals.
- e. Prepare conceptual images to support Site Plan and to help define project's theme and direction.
- f. Develop a Preliminary Landscape Plan, at 20-scale, based upon feedback and approvals from schematic amenity designs. This plan shall accurately represent tree locations and softscape design intent.
- g. Prepare colored illustrative Preliminary Landscape Plan for final presentation.
- h. Prepare conceptual plant palette with supporting imagery within submittal package.

3. Phase 3 - Construction Documents:

Sitescapes, Inc. shall prepare construction documents pertaining to the landscape architectural improvements after the Client has approved "PHASE 2", preliminary landscape drawings and has given authorization to proceed.

{Note: If it is necessary to begin this phase of work prior to provision of the final Architecture or Site Plan, revisions to our drawings resulting from such changes shall be billed to the Client as extra work on an hourly basis.}

The construction document shall include the following:

- a. Develop the following plans for construction @ 20 scale.
 1. Construction plan indicating location and type of all hardscape elements designed by Sitescapes, Inc. including art elements, paving/trails, benches/seating, etc.
 2. Prepare a schematic irrigation plan that modifies the existing irrigation system so it reflects the new design layout as prepared by Sitescapes. Sitescapes is not responsible for the condition and functionality of all elements the existing system.
 3. Planting Plan indicating location, species, size and quantity of new trees, shrubs, lawn, and groundcover and showing existing trees that are to remain.
 4. Coordinate material selection for hardscape items designed by Sitescapes, Inc. This includes decomposed granite, concrete color specifications etc.
{Excludes formal color/material board presentations.}
 5. Aesthetic lighting design indicating locations and fixture type for all pole, bollard, exhibit and tree uplights. Design shall include photometric calculations and electrical diagrams.
{Foot candles and electrical calculations would be completed by Electrical Engineer.}
 6. Hardscape construction details as required.
 7. Planting and irrigation construction details as required.
 8. Develop construction specifications as required.
- b. Develop cost estimate based upon completed construction drawings.
- c. Client will submit construction drawings for approval.
- d. Sitescapes, Inc. to make City of Cost Mesa plan check corrections, as required. This does not include Site Plan changes beyond our control.

The Construction Documents will set forth the requirements for the construction of the Project in Sitescapes customary formats and levels of quality, and in sufficient detail to enable a knowledgeable and experienced contractor familiar with code requirements, with statutorily specified functionality standards, with established industry practices, and with projects similar to the Project to bid and to complete construction with only routine inquiries, corrections, and clarifications. These documents will delineate only the locations, key dimensions, and general methods of installing and assembling the Project's major components. These documents will not direct or require specific materials, products, or details of construction except where specifically noted or required by law or by governmental authorities; and unless so noted or required, the responsibility for the selection, fabrication, and installation of any particular material, product, or assemblage will not lie with the Landscape Architect, but rather with those who make and implement these decisions.

4. Phase 4 - Construction Administration:

A. Landscape Architect's Basic Construction Administration Services

Sitescapes, Inc. will provide administration of construction documents and periodically observe construction during the installation phase to ascertain conformity of construction to design intent. Our participation shall be based upon the request from the Client or his authorized field representative. As part of this phase of work our services include:

1. Reconnaissance and tagging of specimen tree material.
2. Review of shop drawings and approval of material samples as specified in construction documents. Landscape Architect will not review shop drawings or other contractor submittals for any purpose other than for conformity with aesthetic design concepts, and in no event will Landscape Architect review shop drawings for accuracy or completeness, for serviceability or performance, for constructability, for code compliance, for coordination among trades or compatibility with other Project components, or for contractor safety precautions all of which are the sole responsibility of the submitting contractor.

3. Observation of layout and installation of hardscape work in relation to design intent and quality of workmanship.
4. Observation of layout and installation of irrigation system including coverage test.
5. Observation of installation of plant material quality and installation at the project site.
6. Observation to establish 90-day maintenance period. Develop punch list, as required.
7. Final observation at the end of the 90-day maintenance period. Develop punch list, as required.
8. Prepare final certificate of completion review and report for city.
9. Construction site visitation and meetings [total number not expected to exceed (2)].

If expressly set forth in the scope of work, LANDSCAPE ARCHITECT will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed landscape work and to determine in general if the landscape work is being performed in a manner indicating that, when completed, it will be in accordance with the landscape plans and specifications. However, LANDSCAPE ARCHITECT will not be required to make exhaustive or continuous on-site inspections to check quality of the work. On the basis of the on-site observations, LANDSCAPE ARCHITECT will endeavor to keep the Client informed of progress of the landscape work and will endeavor to guard the Client against defects and deficiencies in the landscape work. However, LANDSCAPE ARCHITECT will not have control over, or charge of, and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project. LANDSCAPE ARCHITECT will not be responsible for the failure of any person or entity to carry out the work in accordance with the contract documents.

B. Additional Services beyond Landscape Architect's Basic Services

At Client's express request, Landscape Architect will provide any or all of the following additional services pursuant to the hourly fee schedule as set forth in Article 4 of this Agreement:

1. All costs involving document reproduction and deliveries.
2. Governmental meetings or presentations (other than described above).
3. Additional meetings beyond those described above.
4. Preparation of colored renderings, theme boards, models, computer modeling, CADD files, or similar presentation materials.
5. Soils and/or geological investigation.
6. Value Engineering Revisions: Revisions required to value engineer the Consultant's Design Team's portion of the project.
7. Verification of the accuracy or completeness of information provided by Client, other consultants, or other reasonably reliable sources.
8. Preparation of documents for alternate, fast track, separate or sequential bids, or multiple phases, or providing services in connection with bidding, negotiation, or construction prior to or after the completion of the Construction Documents including preparation of documentation of separate permit and plan check submittals.

9. Making revisions to the Construction Documents or other documents when such revisions are:
 - a. Inconsistent with approvals or instructions previously given by Client, including revisions made necessary by changes in the Project program, budget, scheduling or phasing, or the result of Client's failure to render decisions in a timely manner;
 - b. Required by the enactment, amendment, or revised interpretation of governmental or quasi-governmental requirements subsequent to the preparation of such documents, or by the discretionary decisions of governmental or quasi-governmental officials inconsistent with prior approvals; or
 - c. Necessitated by site conditions that were neither foreseen nor reasonably foreseeable by Landscape Architect at the time the documentation was originally prepared.

If during the progress of the development of plans or during construction, Client finds it desirable or necessary to cause the Landscape Architect to perform Additional or Extra Services, the payment for such additional work shall be based on our hourly rates.

C. Excluded Services and Assumptions:

1. Sitescapes, Inc. is not responsible for providing the following services:
 - a. Providing project management services
 - b. Providing survey services other than those described above
 - c. Identifying or determining project's bidding requirements
 - d. Determining project budget
 - e. Any maintenance services after project's completion
 - f. Plan check fees and/or building permits or submittals
 - g. Preparation of a SWPPP and / or WQMP Plan
 - h. Grading and drainage design
 - i. "As-Built" Drawings: Preparation of "As-Built" Record Drawings is not included in this Scope of Services. Consultant assumes that the Contractor shall provide this effort.
 - j. Responsibility for the accuracy or completeness of data and/or design work provided to Landscape Architect by Client, other design professionals, or other reasonably reliable sources, and will have no responsibility for such information even if it is incorporated into Landscape Architect's Instruments of Service for coordination, ease of reference, or any other purpose.
 - k. Final grading and drainage plans
 - l. Selecting any of the art elements to be displayed and the method in which they are displayed and anchored.
 - m. Determining the existing layout and quality of the existing irrigation system.
2. Sitescapes, Inc. is not responsible for the following on-site conditions:
 - a. Any or all existing subsurface conditions
 - b. Soil issues (including soil content, toxicity and level of compaction)
 - c. Identifying and/or verifying lot line locations
 - d. Existing on-site drainage
 - e. On-site utilities locations
 - f. Existing irrigation equipment
 - g. Existing park site furniture
 - h. Existing trees health and form
3. Project Assumptions:
 - a. Others will prepare subsurface drainage plan including sizing pipe and calculating inverts. Sitescapes, Inc. to review plan design intent.
 - b. The Client's structural engineer to review and provide needed information regarding structural reinforcements of hardscape items, including items such as walls, bollards, trellises, etc.
 - c. Construction meetings and review services provided by Landscape Architect is not in a supervisory role to the contractors or his workers, but merely to observe the progress of the installation of the plans and specifications.

- d. **Materials and Colors Consultant:** It is assumed that the Client's Materials and Colors Consultant shall select and specify colors and materials for the Project. Consultant shall coordinate its work with that of the Client's Materials and Colors Consultant.

D. Professional Agreement:

Landscape Architect agrees to provide its professional services in accordance with generally accepted standards of its profession. Landscape Architect agrees to put forth reasonable efforts to comply with codes, laws and regulations in effect as of the date of this agreement.

ARTICLE 2: CLIENT'S RESPONSIBILITIES

- A. Client agrees to provide Landscape Architect with all information, surveys, reports, anticipated improvements and professional recommendations requested by Landscape Architect to provide its professional services. Format of such information shall be AutoCAD or reproducible format. Landscape Architect may reasonably rely on the accuracy and completeness of these required information items.
- B. The Client will promptly advise the Landscape Architect of any fault or defect in Landscape Architect's work or non-conformance during the construction with the documents prepared pursuant to this Agreement. It is Client's responsibility prior to and during construction to promptly notify Landscape Architect in writing of any perceived errors or omissions in the Construction Documents of which a contractor thoroughly knowledgeable with the building codes, statutorily specified functionality standards, and industry standard methods of construction should be reasonably aware.
- C. Verbal request to commence each task or phase constitutes approval of prior design, material selection, etc. Design revisions will be incorporated into the subsequent design phase.
- D. Client agrees to advise Landscape Architect of any known or suspected contaminants at the Project site. Client shall be solely responsible for all subsurface soil conditions unless otherwise agreed to in writing.
- E. Client will obtain and pay for all necessary permits from authorities having jurisdiction over the project. Landscape Architect will assist Client with this obligation by completing and submitting appropriate paperwork and forms to governing authorities. Landscape Architect's assistance, however, shall not include attendance at more than one meeting with such governing authorities or creating additional or special documentation required by such authorities.
- F. The Client will require that each contractor and subcontractor performing work on the Project be properly licensed and agree to indemnify, defend, and hold harmless Client and Landscape Architect, and their officers, agents, and employees, for claims, losses, expenses, including attorney's fees, and any damages arising in connection with such contractor's and/or subcontractor's performance; and maintain general liability insurance in annual limits of at least \$1,000,000.00 per claim and aggregate with Client and Landscape Architect named as additional insureds.
- G. Client agrees to provide the items described in Article 2.A and to render decisions in a timely manner so as not to delay the orderly and sequential progress of Landscape Architect's services.

ARTICLE 3: ESTIMATED SCHEDULE AND PROJECT BUDGET

- A. Landscape Architect shall render its services as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact any Project schedule.
- B. As of the date of this Agreement, Client's Project budget is undetermined. Client agrees to promptly notify Landscape Architect if Client's schedule or budget changes. Client acknowledges that significant changes to the Project schedule, budget or the Project's scope may require Additional Services of Landscape Architect.

ARTICLE 4: COMPENSATION AND PAYMENTS

A. Client agrees to pay Landscape Architect as follows:

1. Basic Services:

- a. Phase 1 – Project Coordination and Meetings.....Hourly, not to exceed \$2,000.00
- b. Phase 2 – Preliminary Landscape Plan.....\$7,000.00
- c. Phase 3 – Construction Documents.....\$11,000.00
- d. Phase 4 – Construction Administration.....Hourly, as requested

2. Additional Services: As requested

3. Hourly Rates: (Rates subject to adjustment one (1) year from date of contract)

Principal/Partner	\$160.00
Department Head / 3D Design	\$145.00
Sr. Project Manager	\$140.00
Project Manager	\$120.00
Landscape Designer	\$112.00
Draftsman	\$90.00
Clerical	\$40.00
Mileage	\$00.56

4. Payment shall be made as follows:

- a. Invoices are billed the last day of each month and are based upon percentage of work completed per phase.
- b. Each invoice shall be due and payable upon receipt, and delinquent 30 days after its date. In the event of delinquency, interest shall accrue from the invoice date at the rate of 10%, or at the highest rate permitted by California Law, whichever is lower. No deductions shall be made from SITESCAPES, INC. compensation on account of claims or losses for which an appropriate court or arbitrator has not held SITESCAPES, INC. legally liable.
- c. In light of the obvious advantage of resolving questions and disputes regarding Architect's billing quickly and while recollections are fresh, Client will notify Architect of any questions or dissatisfaction which may regard any particular invoice within 30 days of the invoice date, and if Client fails to give Architect such notice, then Client will have waived its right to dispute the accuracy and appropriateness of the invoice and the invoice will be binding upon Client.

B. The reimbursable expenses concerning the project for which Client shall be responsible at a multiple of 1.10 include, but are not necessarily limited to, all costs involving reproduction, postage, and handling of documents; long distance and facsimile charges; deliveries, mileage, authorized travel, additional insurance required by Client over and above that which the Landscape Architect or its sub-consultants customarily carry, employee overtime necessitated by Client's express request for expedited service, any governmental fees or costs advanced by the Landscape Architect as a Client accommodation, and Client requested renderings and models.

C. Landscape Architect shall bill Client for Basic and Additional Services and Reimbursable Expenses once a month. All payments are due Landscape Architect upon receipt of invoice. A service charge of 1.5% per month will be charged on all amounts due more than 30 days after the date of invoice.

ARTICLE 5: TERMINATION

A. Either Client or Landscape Architect may terminate this Agreement upon seven days written notice provided only that such notice is based upon good faith belief that the other party has materially breached this agreement and failed or refused to remedy that breach pursuant to the terms of the agreement.

B. If terminated, Client agrees to pay Landscape Architect for all Basic and Additional Services rendered and Reimbursable Expenses incurred up to the date of termination pursuant to the compensation provisions of this agreement.

C. Upon not less than seven days' written notice, Landscape Architect may suspend the performance of its services if Client fails to pay Landscape Architect in full for services rendered or expenses incurred.

Landscape Architect shall have no liability because of such suspension of service or termination due to nonpayment.

- D. This agreement, unless previously terminated by written notice, shall be terminated by the final payment for the finished work.

ARTICLE 6: DISPUTE RESOLUTION

- A. Client and Landscape Architect agree to mediate claims or disputes arising out of or relating to this Agreement as a condition precedent to litigation. The mediation shall be conducted by a mediation service acceptable to the parties. A demand for mediation shall be made within a reasonable time after a claim or dispute arises and the parties agree to participate in mediation in good faith. Mediation fees shall be shared equally. In no event shall any demand for mediation be made after such claim or dispute would be barred by the applicable law.

ARTICLE 7: OWNERSHIP OF DOCUMENTS

- A. All instruments of professional service prepared by Landscape Architect, including, but not limited to, drawings and specifications, are the property of Landscape Architect, and these documents shall not be reused on other projects without Landscape Architect's written permission. Landscape Architect retains all rights, including the copyright in its documents. Client or others cannot use Landscape Architect's documents to complete this Project with others unless Landscape Architect is found to have materially breached this Agreement.
- B. Landscape Architect reserves the right to include representations of the Project in its promotional and professional materials.

ARTICLE 8: GOVERNING LAW

- A. This Agreement is governed by the law of the state in which the Project is located.

ARTICLE 9: AMERICAN DISABILITIES ACT PROVISION

- A. It is recognized that Client faces certain obligation under the Americans with Disabilities Act (ADA) that could affect the design of the project. It is further recognized that the ADA is Federal Civil Rights Legislation that is not part of, or known to be compatible with, state or local law, codes, and regulations governing construction. Consequently, Landscape Architect will be unable to make recommendations or professional determinations that will ensure compliance with the ADA or guarantee that all design decisions will conform to the ADA standard of "reasonable accommodation." Landscape Architect strongly advises Client to obtain appropriate legal counsel with respect to compliance with the ADA.
- B. Landscape Architect will endeavor to design for accessibility by the disabled in conformance with any applicable provisions in or references by applicable state or local building codes. Landscape Architect further agrees to include in the design such provisions for the disabled as Client may request in response to the ADA, provided such requests are timely made, technically achievable, and in conformance with all other pertinent codes and regulations.
- C. Client will determine the full extent of his or her obligations under the ADA. Client shall communicate design requests regarding compliance with the ADA to Landscape Architect in writing at the appropriate times during the project to allow for incorporation of such requests without requiring revisions after the completion of a given design phase, i.e., schematics, design development, construction documents.

ARTICLE 10: ENTIRE AGREEMENT AND SEVERABILITY

- A. This Agreement is the entire and integrated agreement between Client and Landscape Architect and supersedes all prior negotiations, statements or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Client and Landscape Architect.
- B. In the event that any term or provision of this agreement is found to be void, invalid or unenforceable for any reason, that term or provision shall be deemed to be stricken from this agreement, and the balance of this agreement shall survive and remain enforceable.
- C. Should Client find it necessary to abandon the project or decide to sell the project the Landscape Architect shall be compensated for all work completed according to the schedule of payment designated. Scheduled

items not completed but upon which work has been performed, shall be paid for upon the basis of estimated extent of completion.

ARTICLE 11: NO ASSIGNMENT

- A. Neither party can assign this Agreement without the other party's written permission. Article 11 Limited Construction Phase Services.
- B. Notwithstanding any other term in this Agreement, Landscape Architect shall not control or be responsible for another's means, methods, techniques, schedules, sequences or procedures, or for construction safety or any other related programs, or for another's failure to complete the work in accordance with the plans and specifications.
- C. Construction-phase services will be provided to determine the general progress of the work, but will not include supervision of the contractors, or of their means, methods, techniques, schedules, sequences or procedures, or for construction safety or any other related programs. Landscape Architect maintains the right but not the duty to recommend that Client reject work that does not appear to conform generally to the plans and specifications. Landscape Architect shall not have any liability for recommendations made in good faith.

ARTICLE 12: INDEMNIFICATION

- A. Client agrees to indemnify, defend and hold Landscape Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including injury or death, or economic losses, arising out of the Project and/or the performance or non-performance of obligations under this Agreement, except to the extent such damages or losses are found by a court or forum of competent jurisdiction to be caused by Landscape Architect's negligent errors or omissions.

ARTICLE 13: ATTORNEYS' FEES

- A. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the predominantly prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' and expert witnesses' fees, which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

ARTICLE 14: WAIVERS OF CONSEQUENTIAL DAMAGES AND SUBROGATION

- A. Client and Landscape Architect waive all claims to consequential damages for any claims or disputes arising out of or relating to this agreement.
- B. In addition, Client and Landscape Architect waive all claims against each other to the extent covered by any applicable insurance during design or construction, including but not limited to claims for subrogation.

ARTICLE 15: CLIENT'S RESPONSIBILITY FOR MAINTENANCE

- A. Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of or improper maintenance in areas may result in damage to property or persons. Client further acknowledges that, as between the parties to this Agreement, Client is solely responsible for the results of any lack of or improper maintenance.

ARTICLE 16: NO THIRD-PARTY BENEFICIARIES

- A. Nothing in this agreement is intended to create a contractual relationship for the benefit of any third party. There are no intended beneficiaries of this agreement except Landscape Architect and Client.

ARTICLE 17: EXPIRATION OF PROPOSAL

If this agreement is not accepted within 60-days, the offer to perform the described services is withdrawn and shall be null and void.

Should the above reflect a mutual understanding of services to be rendered for the stated fee, an authorized signature on the attached copy will initiate our work.

SIGNED ON BEHALF OF:

SITESCAPES, Inc.
California License #2782
3190 B-2 Airport Loop Drive
Costa Mesa, CA 92626



Scott Shoup
Partner

ACCEPTED AND AGREED:

City of Costa Mesa

By: _____

Date: _____

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.