

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH GROUP DELTA CONSULTANTS, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 23rd day of December 2024 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and GROUP DELTA CONSULTANTS, INC., a California corporation ("Consultant").

RECITALS

A. City proposes to utilize the services of Consultant as an independent contractor to provide hazardous waste services for the Adams Avenue Bicycle Facility Project, 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 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 Exhibit "A," attached hereto and made a part of this Agreement. Consultant's total compensation shall not exceed Thirty-Seven Thousand Two Hundred Seventeen Dollars and Fifteen Cents (\$37,217.15).

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. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "A," attached hereto and incorporated herein. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, 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 twelve (12) months, ending on December 22, 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 period upon mutual 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:

Group Delta Consultants, Inc.
1035 S. Milliken Avenue, Suite G
Ontario, CA 91761
Tel: (951) 219-5302

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5609

Attn: Jack Packwood,
CIH Associate

Attn: Ramin Nikoui

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. If 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 negligent performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the negligence of the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise

asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11 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 once payment has been received by Consultant. 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 7920.000 *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 7924.510, 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

Glenn Burks, Director of Environmental Services

Date: 12/23/2024

CITY OF COSTA MESA



Carol Molina
Purchasing Officer

Date: January 7, 2025

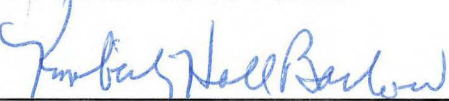
ATTEST:



Brenda Green
City Clerk




APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

Date: 1/8/25

APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 1/7/25

APPROVED AS TO CONTENT:



Ramin Nikoui
Project Manager

Date: 1/6/25

DEPARTMENTAL APPROVAL:



Raja Sethuraman
Public Works Director

Date: 1-6-25

EXHIBIT A
CONSULTANT'S PROPOSAL



GROUP DELTA

Costa Mesa
77 Fair Drive
Costa Mesa, California 92626

December 12, 2024
Proposal No. EN24-253

Attention: Kole Bussell

Subject: Proposal for Hazardous Waste Services
Adams Avenue Bicycle Facility Project
Harbor Boulevard to Fairview Road
Costa Mesa, California

Dear Mr. Bussell,

In response to your request, Group Delta Consultants, Inc. (Group Delta) is pleased to submit to the City of Costa Mesa (Client) this proposal to provide hazardous waste services for the Adams Avenue Bicycle Facility Project in Costa Mesa, California.

PROJECT DESCRIPTION

The Adams Avenue Bicycle Facility Project will implement Class II bike lanes with buffers and Class IV cycle tracks along Adams Avenue from Harbor Boulevard to Fairview Road. This project includes median modifications, pavement slurry seal, and intersection and traffic signal modifications at Fairview/Adams. The project will complement and tie into the federally funded intersection improvements at the intersection of Adams Avenue and Pinecreek Drive and will connect residents and visitors of all ages and abilities to a large number of opportunity sites and to nearby high-frequency transit service.

PROJECT UNDERSTANDING AND APPROACH

The project presents typical concerns and obligations related to hazardous waste for a project under oversight from Caltrans Environmental Engineering. First, Caltrans will require due diligence for the project in the form of a Caltrans compliant Initial Site Assessment (ISA). Any investigations recommended by the ISA must be conducted; this includes an Aerially Deposited Lead (ADL) Site Investigation (SI) for unpaved soil that will be disturbed. Group Delta maintains positive working relationships and has dealt proactively with Caltrans District 12 for numerous previous and ongoing projects.

It is assumed no hazardous building materials surveys (e.g., asbestos, lead paint, etc.) are needed and striping will be managed using standard specifications.

SCOPE OF WORK

Initial Site Assessment

Group Delta will first prepare one Initial Site Assessment (ISA) Checklist which will include a Site screening for hazardous materials and petroleum products using the Caltrans template. Group Delta will then prepare one ISA report which will include a Site assessment for hazardous materials and petroleum products using the Caltrans ISA Guidance Document. The work will be performed in general accordance with Federal All Appropriate Inquiry (AAI) requirements and American Society for Testing and Materials (ASTM) E1527-21 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. Following is a summary of tasks:

- Review of information provided by client;
- Site reconnaissance to look for indicators of potential hazardous materials;
- Environmental databases search and outreach to various agencies such as Regional Water Quality Control Board, Department of Toxic Substance Control, and other City/county agencies that deal with hazardous materials;
- Review selected historical records and mapping including aerial photos and maps; and
- Completing the Caltrans User Questionnaires.

Our product will be one ISA report including a discussion of any recognized environmental conditions or areas of concern pertaining to hazardous materials or petroleum products which could impact the project. The report will also include the site location map, site visit notes, User Questionnaire, an environmental database search report, historical topographic maps and aerial photographs, and selected photographs from the site reconnaissance. Group Delta will also provide recommendations for additional site investigation, if warranted.

Aerially Deposited Lead Site Investigation

Pre-Field Activities

The following pre-field activities are proposed as part of the ADL Site Investigation.

- Prior to start of the project, Group Delta will prepare an ADL Site Investigation Work Plan including a health and safety plan (HASp) for the Project. The work plan will address procedures for sampling and laboratory analysis.
- Group Delta will comply with encroachment requirements to perform work within City Right-of-Way (ROW) at the Site. We assume that permitting fees will be waived.

Field Investigation

Our scope will include testing the unpaved areas of the project footprint for ADL contamination. Hand augers will be used and advanced to a maximum depth of up to 3 feet to collect soil samples. Samples that are sent to the laboratory will be analyzed for lead using the Environmental Protection Agency (EPA) Method 6010B. Samples will also be analyzed for pH and via the California Waste Extraction Test (CA-WET), CA-WET using deionized water (DI-WET), and Federal Toxicity Characteristic Leaching Procedure (TCLP), only as necessary.

It is assumed no more than 9 shallow borings (within the center median) will be required at unpaved locations only. The scope only includes a basic ADL survey of shallow soil and will not include analyses for any constituents other than lead only, collection of samples from depths deeper than 3 feet below ground surface, groundwater sampling, or use of any field monitoring or global positioning equipment.

Reporting

The results of the sampling and testing will be statistically analyzed using methods consistent with Caltrans requirements and the findings will be submitted in a project ADL Site Investigation report.

FEES

Our not to exceed fees (attached) for the above scope of work by task will be provided on a time and materials basis in accordance with standard rates (reduced 2019 rates).

We will not exceed these fees unless we encounter significant unexpected problems or change of scope. In that event, we will discuss the situation with you before incurring any additional cost. The above fee estimate covers services provided through the completion of our reports. Supplemental post-report services will be provided, as needed, in accordance with our contract rates in effect at the time the work is performed.

ASSUMPTIONS

The schedule and budget estimate presented above is based on the following assumptions:

- Encroachment permitting will be provided or, at a minimum, at no cost. City will immediately provide requirements for encroachment and there will be no down time for encroachment permitting.
- Caltrans approval of the ISA is not required prior to initiating the ADL Site Investigation.
- Caltrans approval of the ADL Site Investigation Work Plan is not required, and we can move directly into field sampling.

- We assume that traffic striping will be managed using Caltrans Standard Specifications and does not require investigation.
- Traffic control is not required.
- No additional site investigation will be required beyond ADL; no recognized environmental conditions (RECs) will be identified in the ISA.

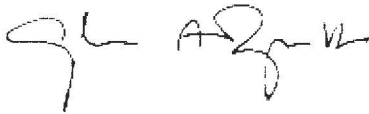
SCHEDULE

The ISA and ADL Site Investigation reports will be submitted within 6 weeks of notice to proceed. This assumes Caltrans approval of the ADL Site Investigation Work Plan is not required, and we can move directly into field sampling. Rushed analytical fees are included to accommodate this expedited schedule.

CONCLUDING REMARKS

We look forward to being your consultant on this project. Please feel free to call us if you have any questions on the contents of this proposal.

Sincerely,
GROUP DELTA CONSULTANTS, INC.



Glenn Burks, PhD, PE
Director of Environ. Services



Jack Packwood, CIH
Associate

ACCEPTANCE OF PROPOSAL AND AUTHORIZATION TO PROCEED

Client/Company:

Print Name:

Signature:

Title:

Date:

Address:

Email:

Phone No:

Mobile No.:

Invoicing Instructions:

TABLE 1 - COST ESTIMATE
Hazardous Waste Site Investigation Services
Adams Avenue Bicycle Facility Project
Harbor Boulevard to Fairview Road
Costa Mesa, California

TASK DESCRIPTION										TOTALS				
	Principal	Associate	Senior	Project	Staff	Field/Lab Technician	Illustrator/Drafting	Clerical & Support Assistant	LABOR	EQUIPMENT/ MILEAGE	LABORATORY	SUB CONTRACTS	Total ODC's	TOTAL
Hourly Rate (reduced 2019-2021 Fee Schedule)	\$245	\$225	\$180	\$170	\$155	\$100	\$100	\$80						
TASK NAME	HAZARDOUS WASTE SERVICES													
Initial Site Assessment														
Project Review				2					\$340					\$340
Review of Historical Records				6					\$1,020					\$1,020
Review of Database Reports				6					\$1,020			\$550	\$550	\$1,570
Site Reconnaissance				6					\$1,020	\$100			\$100	\$1,120
Interviews				2					\$340					\$340
Draft Report	1	4		24					\$5,225					\$5,225
Response to Comments				2					\$340					\$340
Final Report			1	4					\$905					\$905
Project Administration, QA/QC, Discussions	1	2							\$695					\$695
Subtotal	2	7		52					\$10,905	\$100		\$550	\$650	\$11,555
ADL SI - Pre-Field Activities														
Site Investigation Work Plan	1	2		8			2		\$2,255					\$2,255
Encroachment Permit			1	2					\$565					\$565
Site Access Coordination			1	2					\$565					\$565
Underground Service Alert				2					\$340					\$340
Subtotal	1	4		14			2		\$3,725					\$3,725
ADL SI - Field Activities														
Marking Borings USA Clearance				1	8				\$1,410	\$100			\$100	\$1,510
Mobilization/Demob				1	8				\$1,410					\$1,410
Field Work (9 borings)				4	32				\$5,640	\$500			\$500	\$6,140
Laboratory Testing				2					\$340		\$2,922		\$2,922	\$3,262
Project Administration, QA/QC, Discussions	1	2							\$695					\$695
Subtotal	1	2		8	48				\$9,495	\$600	\$2,922		\$3,522	\$13,017
ADL SI Reporting														
Data Reduction					4				\$620					\$620
Data Validation					2				\$310					\$310
Draft Report	1	4		24			6		\$5,825					\$5,825
Response to Comments				2					\$340					\$340
Final Report			2	4					\$1,130					\$1,130
Project Administration, QA/QC, Discussions	1	2							\$695					\$695
Subtotal	2	8		30	6		6		\$8,920					\$8,920
TOTAL	6	21		104	54		8		\$33,045	\$700	\$2,922	\$550	\$4,172	\$37,217

TOTAL \$37,217.16



TERMS & CONDITIONS

RECOGNITION OF RISK

Client recognizes that the interpretations and recommendations of Group Delta Consultants, Inc. (GDC) are based solely on the information available to GDC. Client further recognizes that surface and subsurface conditions can vary from those encountered at the times and locations where data are obtained by GDC, and that the limitation on available data results in some level of uncertainty with respect to the interpretation of these conditions despite the use of due professional care.

GDC will not be responsible for and Client shall hold GDC harmless for the effect on any opinion rendered hereunder of unknown circumstances or conditions such as acts of others on adjacent properties and variables of nature including but not limited to earthquakes, masking of rocks by heavy ground cover or the works of man, acts of God, or other variables beyond the control of GDC.

GDC shall write reports to meet the administrative requirements of local governmental agencies; however, as the decisions of such agencies are discretionary, GDC does not guarantee the approval of its reports or of Client's project by any governmental agency.

PROFESSIONAL RESPONSIBILITY

GDC represents that the Services, as described in GDC's Proposal, shall be performed, within the limits prescribed by Client, in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances. No other representations to Client, express or implied, and no warranty or guarantee is included or intended in this Agreement (as defined below), or in any report, opinion, document or otherwise.

AGREEMENT

This "Agreement" consists of GDC's Proposal, Fee Schedule, these Terms & Conditions, and all documents referenced therein as specifically being incorporated into the Agreement, if any.

PROFESSIONAL SERVICES INDEMNITY

GDC agrees to indemnify and hold Client harmless (but not defend) from any damages, liability, or costs arising out of or resulting from performance of the Services solely to the extent any such damages, liability, or costs are determined to be caused by GDC's established and adjudicated negligence and only in direct proportion thereto. In no event shall the cost to hold harmless or indemnify exceed GDC's established and adjudicated proportionate percentage of fault. GDC is not obligated to indemnify Client in any manner whatsoever for Client's negligence, whether active or passive, or for Client's reckless or willful misconduct. GDC shall defend itself from any actual or alleged claims arising from GDC's services under this Agreement. If any part of this provision shall be declared by any court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provision shall remain in effect to the fullest and maximum extent allowable by law.

Client agrees to indemnify, hold harmless, and defend GDC from and against any and all loss, including reasonable attorneys' fees, injury, damage to property or person, liability, costs, and/or claims caused by the action or inaction of Client, its agents, employees, officers, directors, shareholders, or anyone for whom Client is legally responsible. In no event shall Client defend or indemnify GDC for GDC's sole negligence or reckless or willful misconduct. GDC shall defend itself from any actual or alleged claims arising from GDC's services under this Agreement.

LIMITATION OF LIABILITY

Client and GDC have discussed the risks and rewards associated with the Project, as well as GDC's fee for its Services on the Project. Client and GDC agree to allocate risks so that, to the fullest extent permitted by law and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of GDC and its officers, directors, members, partners, agents, employees, and consultants to Client and anyone claiming by, through, or under Client for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, the Services, or the Agreement from any cause or causes, including but not limited to professional negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty (express or implied) shall be limited to an amount not to exceed \$50,000 or the fee of GDC, whichever sum is greater; provided, however, that for projects on which GDC's fee is higher than the limits of its professional liability insurance policy, GDC's liability is limited to its available insurance coverage.

For any damage arising out of the Project, the Services, or the Agreement caused by negligence other than professional negligence, GDC's liability, including that of its employees, agents, and subcontractors, in the aggregate under this Agreement, shall not exceed the available limits of GDC's comprehensive general and automobile liability, as applicable, insurance coverage.

In no event shall either GDC or Client be liable for punitive damages or consequential, incidental, or indirect damages, including, without limitation, loss of use, loss of profits, delays, diminution of value, fines, penalties, or the additional costs of completing the development of the property, which directly or indirectly arise out of the Project, the Services, and/or this Agreement, regardless of whether such claim is based upon alleged breach of contract, willful misconduct, or negligent act or omission, whether professional or non-professional, of GDC or Client or their agents, employees, subcontractors, officers, directors, or shareholders, except to the extent that such damages are actually paid through insurance procured by the parties that applies to this Agreement.

METHOD OF CHARGING AND PAYMENT CONDITIONS

GDC will submit the invoices to Client as stated in the Proposal or periodically and a final invoice will be submitted upon completion of the Services. GDC may require retainer on selected projects. Payment is due upon presentation of invoice and is past due thirty (30) days from the invoice date. Client agrees to pay a finance charge of one and one-half percent (1-1/2%) per month, or the maximum rate allowed by law, on past due accounts. Payments shall first be applied to accrued interest and then to the principal unpaid amount. Client specifically agrees further to pay all expenses and costs, including, but not limited to, GDC's staff time in accordance with GDC's current Fee Schedule, attorneys' fees, and court and other costs associated with collection of past due accounts.

If any invoice for work performed by GDC is outstanding and unpaid for a period in excess of ninety (90) days, Client agrees that, in addition to any other remedy which may be available to it, GDC may stop its performance of Services and withhold reports/plans, without liability whatsoever.

Payment to GDC shall not be withheld, postponed, or made contingent on the construction, completion, or success of the Project or upon receipt by Client of offsetting reimbursement or credit from other parties. No withholding, deductions, or offsets shall be made from payments due to GDC for any reason unless GDC has been found to be legally liable for such amounts.

ESTIMATED CHARGES AND PAYMENT CONDITIONS

GDC's fees set forth in the Proposal are only estimates and shall not be regarded as "lump sum", "fixed price", or "guaranteed maximum" compensation unless expressly stated in writing. Additional Services and out-of-scope work will be invoiced based on GDC's Fee Schedule.

ESTIMATED TIME SCHEDULE

Because of the uncertainties inherent in the Services contemplated hereunder, time schedules are only estimates, which are subject to revision from time to time, unless the parties specifically agree in writing to a firm or date-certain schedule.

CHANGED CONDITIONS AND ADDITIONAL SERVICES

Client shall rely on GDC's judgment as to the continued adequacy of this Agreement in light of occurrences or discoveries that were not originally contemplated by or known to GDC. Should GDC call for contract renegotiation, GDC shall identify the changed condition necessitating renegotiation and GDC and Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.

Additional Services may be provided after execution of this Agreement without invalidating the Agreement. Client may request Additional Services be performed by GDC. GDC shall promptly notify Client upon recognizing the need to perform Additional Services. In either event, however, GDC shall not proceed to provide such Additional Services, requested by Client, until GDC receives Client's authorization. Additional Services will be invoiced based on GDC's Fee Schedule (see Attachment A).

RIGHT OF ENTRY

Client will provide for right of entry for GDC's employees, agents, subconsultants, and for any other personnel and all equipment necessary in order to complete the Services. While GDC will take all reasonable precautions to minimize any damage to property, it is understood by Client that in the normal course of performance of Services some damage may occur, the correction of which is not part of this Agreement. Client agrees to indemnify and hold GDC harmless from any liability for any damage so caused by the performance of such Services, unless caused by the gross negligence or willful misconduct of GDC or its employees, agents, subcontractors, or other personnel.

SUBTERRANEAN STRUCTURES OR UTILITIES

Client shall indemnify and hold GDC harmless for damages, liability, costs, or injury arising from damage to subterranean structures or utilities (pipes, tanks, telephone cables, etc.) that are not called to the attention of GDC or are not correctly shown on the plans furnished to GDC, in connection with Services performed by GDC.

CONSTRUCTION PROCEDURES

GDC shall not specify construction procedures, manage or supervise construction, or implement or be responsible for health and safety procedures; shall not be responsible for the acts or omissions of contractors or other parties on the Project; and shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs. GDC's testing or inspection of portions of the work of other parties on the Project shall not relieve such other parties from their responsibility for performing their work in accordance with applicable plans and specifications.

SAMPLES

GDC will retain all soil and rock samples for thirty (30) days following exploration. Further storage or transfer of samples can be arranged at an agreed expense upon Client's written request.

HAZARDOUS SUBSTANCES

Unless specifically included in the Scope of Services in the Proposal, this Agreement does not include any services (including detection or identification) related to any substances which might be considered hazardous by an applicable regulation.

OWNERSHIP OF DOCUMENTS

All reports, boring logs, field data and notes, laboratory test data, calculations, estimates, and other documents prepared by GDC under this Agreement shall be deemed "Instruments of Service" and shall remain the property of GDC. GDC grants to Client a nonexclusive license to use GDC's Instruments of Service solely and exclusively for purposes of designing, constructing, using, maintaining, altering, and adding to the Project, provided that Client substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The license granted under this section permits Client to authorize Client's consultants and contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for the purposes of designing, constructing, using, maintaining, altering, and adding to the Project. Client agrees that all reports and other work furnished to Client or its agents, which are not paid for, will be returned upon demand and will not be used by Client for any purpose whatsoever.

REPLACEMENT OF CONSULTANT

If GDC for any reason does not complete all the Services contemplated by this Agreement, GDC cannot be responsible for the accuracy, completeness, or workability of the Instruments of Service prepared by GDC if used, modified, or completed by another party or Client. Accordingly, Client agrees, to the fullest extent permitted by law, to indemnify, defend, and hold GDC harmless from any claim, liability, or cost (including reasonable attorneys' fees and defense costs) for injury or loss arising or allegedly arising from such reuse, modification, or completion made by any party to any Instruments of Service prepared by GDC.

NO THIRD-PARTY RIGHTS

This Agreement shall not create any rights or benefits to parties other than Client and GDC.

TIME BAR TO LEGAL ACTION

All legal actions by either party against the other for breach of this Agreement, or for failure to perform in accordance with the applicable standard of care, however denominated, that are essentially based on such breach or failure, shall be barred in two (2) years from the time claimant knew or should have known of its claim, but, in any event, not later than four (4) years from the substantial completion of GDC's services.

CONSTRUED AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA

Any claims, disputes, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of GDC's services, GDC may proceed in accordance with applicable law to comply with the lien notice and filing deadlines prior to the initiation of mediation. The Parties agree that mediation shall be held in Orange County, California and shall be administered by either JAMS or the American Arbitration Association, unless the parties mutually agree otherwise. If the parties do not resolve the matter pursuant to mediation, the method of binding dispute resolution shall be litigation in the state courts of California in the county in which the Project is located. The Parties hereby consent to the jurisdiction of such and expressly waive all rights they may have to a change of venue.

In the event of litigation arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred in connection with such dispute, including court costs, attorneys' fees, expert fees, and all other claim-related expenses.

PREVAILING WAGE, UNION, AND CERTIFIED PAYROLL

Client has the responsibility to notify GDC in writing, prior to GDC's commencement of Services, of any Project requirements related to prevailing wages and/or union requirements.

SURVIVAL

The rights and obligations of the Parties shall survive the expiration or termination of this Agreement.

TERMINATION

If Client fails to make payments to GDC within sixty (60) days after the date of GDC's invoice, and such failure continues for seven (7) days after written notice to Client, such failure shall be considered substantial nonperformance and cause for termination or, at GDC's option, cause for suspension of performance of Services under this Agreement. If GDC elects to suspend performance of Services, GDC shall give an additional seven days' written notice to Client before suspending Services. In the event of termination or suspension of Services, GDC shall have no liability to Client for delay or damage caused Client as a result of such termination or suspension. Before resuming Services after a suspension, GDC shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of GDC's Services. GDC's fees for the remaining Services and the time schedules shall be equitably adjusted.

If Client suspends the Project or GDC's Services for more than ninety (90) cumulative days for reasons other than the fault of GDC, GDC may terminate this Agreement by giving not less than seven (7) days' written notice.

Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

Either party may terminate this Agreement for convenience and without cause upon not less than thirty (30) days' written notice to the other party.

In the event of termination that is not the fault of GDC, GDC shall be compensated for Services performed prior to termination, together with reimbursable expenses then due, if any, and all "Termination Expenses." Termination Expenses are in addition to compensation for GDC's Services and include expenses directly attributable to termination for which GDC is not otherwise compensated.

INTEGRATION

This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements as to this Project. There are no other written or oral agreements, representations, or understandings with respect to the subject matter of this Agreement. This Agreement may be amended, modified, or waived only by written agreement signed by both parties.

SEVERABILITY

If any part, term, or provision of this Agreement is held by final judgment of any mediator, arbitrator, or court of competent jurisdiction to be illegal, invalid, or unenforceable, the validity of the remaining portions or provisions shall not be impaired or affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be illegal, invalid or unenforceable.

ASSIGNMENT

Client and GDC, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither Client nor GDC shall assign this Agreement without the written consent of the other.

EXCLUSIONS

Refer to GDC's Proposal for any exclusions to the Scope of Services.

HAZARDOUS MATERIALS

Unless otherwise required in this Agreement, GDC shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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.