

**PROFESSIONAL SERVICES AGREEMENT  
FOR ENVIRONMENTAL ANALYSIS**

THIS AGREEMENT (“Agreement”) is made and entered into this 26<sup>th</sup> day of January, 2017 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and ECORP Consulting, a corporation (“Consultant”).

**W I T N E S S E T H :**

A. WHEREAS, City is the Lead Agency with land use and planning jurisdiction in the City of Costa Mesa as pertains to the California Environmental Quality Act (“CEQA”); and

B. WHEREAS, City has two proposed projects called the Lion’s Park Projects; and

C. WHEREAS, City realizes that the Project may have significant environmental impacts, necessitating preparation of an Initial Study/Mitigated Negative Declaration and related documents and studies, or such other CEQA document as City determines necessary, (“Required CEQA Document”), prepared by a qualified consultant; and

D. WHEREAS, City has selected Consultant based upon the following:

1. Consultant is a professional environmental consulting firm with extensive experience in the preparation of environmental studies and all related documents;
2. Consultant is in good standing with the City;
3. Based on its own criteria, City has determined that the Consultant is fully qualified and well-suited to be selected by City if City had solicited proposals to conduct the work contemplated for the Required CEQA Document;
4. Consultant is prepared to undertake all necessary technical and analytical work required in conjunction with the Required CEQA Document, either directly or through the use of sub-consultants; and

E. WHEREAS, City and Consultant desire to define relationships and areas of responsibility in the preparation and management of the Required CEQA Document.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0. PARTY OBLIGATIONS**

1.1. City Obligations. City shall:

- A. Be responsible for the management of Consultant in the preparation of the Required CEQA Document including:

1. The content of the Required CEQA Document;
  2. The extent and detail of topical area discussions;
  3. The consideration of and response to comments received during the Notice of Preparation of the Required CEQA Document and circulation of the Draft Required CEQA Document;
- B. Perform management activities necessary for the Required CEQA Document, including project coordination regarding day to day processing and creation of the Required CEQA Document;
  - C. Be responsible for conformity with applicable requirements pursuant to CEQA, California Public Resources Code Section 21000, et seq., and other pertinent laws, regulations and procedures;
  - D. Ensure that the Required CEQA Document reflects the independent judgment of the City, per Public Resources Code Section 21082.1, including all documentation prepared and submitted by Consultant with respect to the Required CEQA Document, the Response to Comments Document, and the Final Required CEQA Document;
  - E. Be responsible for the selection of the alternatives to be included in the Draft Required CEQA Document, derived from internal City review, the Required CEQA Document scoping process and comments from resource and responsible agencies and the public;
  - F. Be responsible for noticing and scheduling of public meetings and hearing related to the Project and distribution of the Draft and Final Required CEQA Document; and
  - G. Be responsible for ensuring that the Required CEQA Document and the Required CEQA Document process reflect factual information and an unbiased and objective approach.

1.2. Consultant's Obligation. Consultant shall:

- A. Prepare and provide a Scope of Work, in coordination with the City, which shall be attached hereto as Exhibit "A";
- B. Be responsible for the preparation of the Required CEQA Document including:
  1. The content of the Required CEQA Document based upon the directions of City,

2. The extent and detail of topical area discussions based upon the directions of City,
  3. The consideration of and responses to comments received during the Notice of Preparation of the Required CEQA Document and circulation of the Draft Required CEQA Document, based upon the directions of the City;
- C. Perform activities necessary for the Required CEQA Document, including project coordination regarding day to day processing and creation of the Required CEQA Document;
  - D. Be responsible for conformity with applicable requirements pursuant to CEQA, California Public Resources Code Section 21000, et seq., and other pertinent laws, regulations and procedures;
  - E. Ensure that the Required CEQA Document reflects the judgment of City, per Public Resources Code Section 21082.1, including all documentation prepared and submitted with respect to Draft Required CEQA Document, the Response to Comments Document, and the Final Required CEQA Document;
  - F. Be responsible for the analysis of the alternatives to be included in the Draft Required CEQA Document, derived from internal City review, the Required CEQA Document scoping process and comments from resource and responsible agencies and the public;
  - G. Be responsible for ensuring that the Required CEQA Document and the Required CEQA Document process reflect factual information and an unbiased and objective approach; and
  - H. Document all communication, written and verbal, between City and Consultant, and provide said documentation to the City.

1.3. 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. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City of Costa Mesa, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the department. 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.

1.4. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified time of performance.

Evaluations of the work will be done by the City Clerk 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.

1.5. 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.

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

1.7. 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.

1.8. 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.

1.9. 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. City shall pay all costs of Consultant in the management and preparation of the Required CEQA Document and all work related thereto. Consultant’s total compensation shall not exceed Twenty Three Thousand Three Hundred Dollars (\$ 23,300.00).

**3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The obligations of all parties 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, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

**4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue until such time as action by the City Council of the City of Costa Mesa becomes administratively final on the Project and the Required CEQA Document.

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 services satisfactorily performed up to and including the date of City’s written notice of termination.

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

//  
//

## 5.0. INSURANCE

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

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

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

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased,

hired, or borrowed by the Consultant."

- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

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, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:  
ECORP Consulting  
215 N. 5<sup>th</sup> Street  
Redlands, CA 92374  
Tel: (909) 307-0046  
Email: folmos@ecorpc consulting.com  
Attn: Freddie Olmos

IF TO CITY:  
City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5611  
Email: mel.lee@costamesaca.gov  
Attn: Mel Lee

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "C" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.



6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

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

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. Consultant agrees that the City shall retain ownership of the Required CEQA Document, 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. Consultant shall deliver to City any Required CEQA Document, finding, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the

Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.21. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.22. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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

6.24. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.27. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

**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, ECORP Consulting

Signature

Brant Brechbiel, Vice President/CCO  
[Name and Title]

Date:

1/24/2017  
68-0416814  
Social Security or Taxpayer ID Number

**CITY OF COSTA MESA**

  
\_\_\_\_\_  
Thomas Hatch  
City Manager

Date: 1/25/17

**ATTEST:**


  
\_\_\_\_\_  
Brenda Green  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Thomas Duarte  
City Attorney

Date: 1/26/17

**APPROVED AS TO INSURANCE:**

  
\_\_\_\_\_  
Ruth Wang  
Risk Management

Date: 1/26/17

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Mel Lee  
Project Manager

Date: 1/26/17

**DEPARTMENTAL APPROVAL:**

  
\_\_\_\_\_  
Tamara Letourneau  
Assistant City Manager

Date: 1/26/17

APPROVED AS TO PURCHASING:

Stephen Dunivent  
Stephen Dunivent  
Interim Finance Director

Date: 01-26-2017

**EXHIBIT A**  
**SCOPE OF WORK**



January 6, 2017  
(P16-183.01)

Mel Lee, AICP  
Senior Planner  
City of Costa Mesa  
77 Fair Drive, Costa Mesa, 92628  
Via e-mail to: [mel.lee@costamesaca.gov](mailto:mel.lee@costamesaca.gov)

**Subject: Proposal for California Environmental Quality Act (CEQA) Documentation for the Lions Park Projects – Phases 1 & 2, City of Costa Mesa, California**

Dear Mr. Lee:

ECORP Consulting, Inc. (ECORP) is pleased to submit this proposal to provide CEQA support services for the subject project. This proposal presents ECORP's proposed technical approach, schedule, and cost to complete these environmental services.

## **SCOPE OF WORK**

### **Task 1 – Initial Study/Mitigated Negative Declaration**

#### ***Task 1A – Administrative Draft IS/MND***

An IS/MND will be prepared using the approved checklist format from the City or Appendix G of the CEQA Guidelines. ECORP will prepare a description of the project including the location of the project area (including a project map), a brief description of the environmental setting; an identification of environmental effects using the above-referenced checklist format, a brief substantiation of the checklist entries, and a list of references and preparers. ECORP will provide mitigation measures (if required) that can be developed using existing data.

A site visit by an Environmental Scientist, Biologist, and Archaeologist will be conducted. In addition, record/database searches for biological, cultural, and paleontological resources will be conducted as well as for hazardous materials.

We have assumed we will receive copies of any previously prepared technical reports, plans, and other project information from the City, including electronic versions, to the extent possible.

#### ***Task 1A Deliverables:***

- ◆ An electronic copy of the Administrative Draft IS/MND will be submitted to the City via email for review and comment.



### **Task 1B – Prepare Draft IS/MND**

After receipt of one (1) set of integrated comments on the Administrative Draft IS/MND from the City, we will revise the IS/MND accordingly. ECORP will provide five (5) bound copies and one (1) electronic copy of the environmental document to the City for internal use. ECORP will mail twenty (20) copies of the document to addressees on the mailing list and fifteen (15) copies to the State Clearinghouse. We have assumed that the City and ECORP will work together to assemble the mailing list.

### **Task 1C – Prepare Public and Agency Notices**

ECORP will prepare the following notices as required by CEQA:

- ◆ Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration
- ◆ Notice of Completion (NOC) (State Clearinghouse Cover)
- ◆ Notice of Determination (NOD)

One copy of each of these notices will be filed with the Orange County Clerk and the State Clearinghouse, as appropriate. One electronic copy of each notice will be provided to the City. It has been assumed that the City will pay the CDFW fee when the NOD is posted.

The NOI needs to either be posted on-site, mailed to the surrounding property owners, or published in a newspaper of general circulation. We assume that the City will post the notice using one or more of these methods.

### **Task 1D – Final IS/MND and MMRP**

The Lead Agency (City) must consider any comments received on the MND when making a decision on the project. For costing purposes we have assumed that 10 comment letters containing 2 comments each will be received (or a total of 20 comments). The Final IS/MND will include responses to comments received on the Draft IS/MND, any changes to the Draft IS/MND, and the Mitigation Monitoring and Reporting Program (MMRP, if required), prepared in accordance with CEQA Guidelines Section 15097. The MMRP will be prepared in a table format. ECORP will prepare this document, with input from the City.

An Administrative Final IS/MND and MMRP will be prepared. After review by the City, the Final IS/MND and MMRP will be provided. ECORP will send the Final IS/MND and MMRP to agencies, organizations, and individuals that commented on the project, and also notify them of the date and time of the public hearing for consideration of the project, as required by CEQA.

### **Task 1D Deliverables:**

- ◆ Electronic submittal of the Administrative Final IS/MND and MMRP

- ◆ Five (5) bound copies and one (1) electronic copy of the Final IS/MND. Five (5) bound copies will be mailed to commenting agencies and interested parties, for a total of 10 bound copies.

## Task 2 – Technical Study

An Air Quality/Greenhouse Gas Technical Study will be prepared in support of the IS/MND.

### Task 2A – Air Quality/Greenhouse Gas

As part of the environmental analysis for the proposed project, an air quality and greenhouse gas technical study will be prepared to satisfy CEQA requirements. The analysis will be prepared by Kunzman Associates, Inc. as follows:

- ◆ Identify the existing air quality setting in the area.
- ◆ Identify applicable international, federal, state, SCAQMD's, and local rules and regulations including the State greenhouse gas (GHG) regulations Assembly Bills (AB) 32 and 1493, Senate Bills (SB) 32, 97, 107, 375, 527, 1368, and 1771, and Executive Orders S-3-05 and S-14-08.
- ◆ Obtain existing air quality data from air quality monitoring stations within the study area utilizing California Air Resources Board (CARB) data sources. Data will be obtained for air pollutants, including ozone, carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), PM<sub>10</sub>, and PM<sub>2.5</sub>.
- ◆ Identify greenhouse gases (GHGs) and their associated impacts to global climate change.
- ◆ Identify thresholds of significance for the criteria pollutants and GHGs.
- ◆ Evaluate and quantify regional criteria pollutant and GHG emissions associated with demolition and construction activities for the proposed project utilizing the CalEEMod Model. If significant emission levels are found to be created from construction activities, feasible mitigation will be developed and quantified.
- ◆ Evaluate local NO<sub>x</sub>, CO, PM<sub>10</sub>, and PM<sub>2.5</sub> construction and operational emissions at the nearest sensitive receptors located adjacent to the boundary of the project. The emissions will be compared against the SCAQMD Look-Up Tables and will follow the methodology described in the SCAQMD Localized Significance Threshold Methodology (July 2008).
- ◆ Evaluate and quantify regional criteria pollutant and GHG emissions associated with the operations of the proposed project utilizing the CalEEMod Model. All feasible mitigation will be identified and quantified through use of the CalEEMod Model, as necessary.
- ◆ If the traffic study data deems it necessary, prepare a micro-scale CO screening analysis of the study area intersections based on the conditions in the traffic study prepared for the proposed project and verify if it is in accordance with the SCAQMD requirements as described in the CEQA Air Quality Handbook.
- ◆ Provide a qualitative odor analysis from the construction and operation of the proposed project.

- ◆ Compare the operational GHG emissions to all applicable GHG emissions thresholds including AB 32, SB 375 and SCAQMD’s draft GHG emissions threshold of 3,000 metric tons of CO<sub>2</sub>e per year for all land uses. If the GHG emissions exceed any applicable thresholds, provide mitigation to reduce the GHG emissions.
- ◆ As the City of Costa Mesa does not currently have a Climate Action Plan, the project will be compared to goals of the California Air Resources Board (CARB) Scoping Plan.
- ◆ Prepare an air quality and global climate change report documenting the results of the study. The report will summarize the results of the previous work tasks.
- ◆ Review the City’s comments, whether verbal or written, and revise draft air quality impact analysis (if necessary) and provide the final version.

### Task 3 – Meetings

ECORP will attend two (2) meetings in the City of Costa Mesa as needed for this project. For costing purposes we assume a one (1) to two (2) hour meeting.

## SCHEDULE

ECORP is confident that we can meet the expected time frame for the completion of the IS/MND according to the schedule below. This schedule can be modified based on the needs of the City. We propose to prepare the Administrative Draft IS/MND concurrently with the Air Quality/Greenhouse Gas Analysis and other technical studies to stay on schedule. The technical studies will need to be completed prior to the Draft IS/MND (Task 1B) being completed and the start of the 30-day public review period.

Tasks	Time Frame for Completion
Task 1: IS/MND	
1A: Admin Draft IS/MND	6 weeks from notice to proceed
City Review	2 weeks
1B: Draft IS/MND	1 week from receipt of city comments
1C: Notice of Intent/Notice of Completion	With Draft IS/MND
Public/Agency Review	30 calendar days
1D: Final IS/MND & MMRP (includes Responses to Comments)	2 weeks from end of public review period
City Review	1 week
Notice of Determination	Filed with the County Clerk of Orange within 5 days of MND adoption
Task 2: Air Quality/Greenhouse Gas Technical Study	Prepared concurrently with Task 1A
Task 3: Meetings	As scheduled

## COST ESTIMATE

ECORP will complete the above scope of work (Tasks 1 through 3) on a time-and-materials basis. Our costs are detailed below.

**Table 1 – Cost Breakdown**

Activity	Cost
<b>Task 1 – IS/MND</b>	
1A – Administrative Draft IS/MND	\$8,100
1B – Draft IS/MND	\$3,350
1C – Notices (NOI, NOC, NOD)	\$650
1D – Final IS/MND & MMRP (includes Responses to Comments)	\$1,700
<i>Task 1 Subtotal</i>	<i>\$13,800</i>
<b>Task 2 – Technical Study</b>	
2A – Air Quality/Greenhouse Gas	\$7,550
<i>Task 2 Subtotal</i>	<i>\$7,550</i>
<b>Task 3 – Meetings</b>	
Assumes 2 meetings in the City of Costa Mesa	\$1,950
<i>Task 3 Subtotal</i>	<i>\$1,950</i>
<b>TOTAL COST ESTIMATE</b>	<b>\$23,300</b>

### Bidding Assumptions

- ◆ Schedule estimates are based on our best judgment of the requirements known at the time of the proposal and can be influenced favorably or adversely by the City’s needs and other circumstances. ECORP Consulting, Inc. will perform the services and accomplish the objectives within the presented costs and schedule. However, if the scope of work or schedule changes, ECORP Consulting, Inc., will offer separate proposals for any out-of-scope work.
- ◆ ECORP Consulting, Inc., assumes that, by receipt of notice to proceed, full access to the property will be provided by the City, including keys to locked gates and advance notice to existing property tenants of our right of entry.
- ◆ ECORP Consulting, Inc. shall not be held responsible for work delays or cancellations caused by strikes, accidents, acts of God, delays imposed by the City, or other delays beyond the control of ECORP Consulting, Inc.
- ◆ It is assumed that ECORP Consulting, Inc. can use and rely on the data and information contained in the project related documents provided by the City. ECORP Consulting, Inc., will

not perform a technical review of these documents, and will not be responsible for the content or accuracy of these studies.

- ◆ This cost is valid for a period of 90 days from the date of this the proposal. Beyond 90 days, ECORP Consulting, Inc., reserves the right to reevaluate the cost.
- ◆ Expert Witness Testimony, including Depositions, is billed on a time-and-materials basis at time and a half.
- ◆ If a technical study identifies an impact that would remain significant after mitigation (potentially requiring an Environmental Impact Report [EIR]), then ECORP will immediately notify the City to determine if there may be an engineering solution to minimize or avoid the impact. For the purposes of this scope of work and cost, we have assumed the preparation of an MND. If the impact cannot be reduced to less than significant, ECORP will prepare a separate scope and cost for EIR preparation.
- ◆ Color copies, equipment, and other direct expenses are reimbursed with a 14% administrative handling charge (excluding mileage). These charges are included in the cost estimate, above.
- ◆ AB-52 Native American Consultation is not included but can be provided as a separate proposal.

Thank you for the opportunity to submit this proposal. This scope of work will be completed under the same terms and conditions of our existing As-Needed Environmental Services contract with the City.

If you have any questions regarding this proposal, please contact me at (909) 307-0046 or via e-mail at [folmos@ecorpconsulting.com](mailto:folmos@ecorpconsulting.com).

Sincerely,

**ECORP Consulting, Inc.**



Jesus "Freddie" Olmos  
Senior Environmental Scientist/  
Assistant CEQA Group Manager