

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
MICHAEL BAKER INTERNATIONAL**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 3rd day of February, 2017 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and Michael Baker International, a Pennsylvania Corporation ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to perform environmental analysis pursuant to the requirements of the California Environmental Quality Act ("CEQA") for a development application located at 1555 Adams Ave., as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

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

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the Consultant's proposal ("Consultant's Proposal"), attached hereto as Exhibit "A," incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth on page 9 of Exhibit A. Consultant's total compensation shall not exceed THIRTY-ONE THOUSAND SEVEN HUNDRED FORTY DOLLARS (\$31,740.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the schedule set forth on page 8 of Exhibit "A". This schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of 12 months, ending on February 2, 2018 unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by one additional one-year period upon mutual written agreement of both parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including

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

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

5.0. INSURANCE

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

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

work hereunder.

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

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

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

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail

over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Michael Baker International
14725 Alton Parkway
Irvine, CA 92618
Tel: (949)472-3505
Attn: Eddie Torres

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5153
Attn: Willa Bouwens-Killeen

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 "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 agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due

to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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

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

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

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

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

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

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

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

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

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

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

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

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

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

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

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

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

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

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
MICHAEL BAKER INTERNATIONAL**



Signature

Glenn Lajoie, Vice President

Name & Title

Date: 2/6/17

25-1228638
Social Security or Taxpayer ID Number

CITY OF COSTA MESA



Tom Hatch
City Manager

Date: 2/14/17

ATTEST:

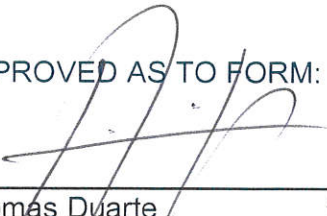


Brenda Green



City Clerk

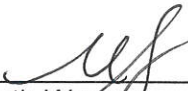
APPROVED AS TO FORM:



Thomas Duarte
City Attorney

Date: 2/10/17


APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 2/7/17

APPROVED AS TO CONTENT:



Willa Bouwens-Killeen
Project Manager

Date: 2-6-17

DEPARTMENTAL APPROVAL:



Tamara Letourneau
Assistant City Manager

Date: 2/13/17

APPROVED AS TO PURCHASING:



Stephen Dunivent
Interim Finance Director

Date: 2-08-17

EXHIBIT A
CONSULTANT'S PROPOSAL

January 27, 2017

Willa Bouwens-Killeen, AICP
Zoning Administrator
CITY OF COSTA MESA
77 Fair Drive
Costa Mesa, CA 92626

RE: PROPOSAL TO PREPARE AN INITIAL STUDY/NEGATIVE DECLARATION FOR A NEW RESTAURANT FACILITY AT 1555 ADAMS AVENUE

Dear Ms. Bouwens-Killeen:

Michael Baker International (Michael Baker) is pleased to submit this letter proposal to prepare an Initial Study/Negative Declaration (IS/ND) for a new restaurant facility at 1555 Adams Avenue (project) pursuant to the California Environmental Quality Act (CEQA).

The following sections of this letter proposal identify our scope of work, schedule, and fee to prepare the IS/ND.

PROJECT TEAM

The Michael Baker project team will be led by our project manager, Eddie Torres. Mr. Torres has extensive experience in preparing and managing CEQA documents and has been with Michael Baker for 17 years. Mr. Torres' primary responsibilities include oversight of daily operations, management of projects, staff mentoring and instruction, scheduling, and business development for the Irvine Environmental Sciences Department. With many years of practical experience, Mr. Torres is a recognized leader in CEQA and NEPA studies (EIR's, EIS's, Negative Declarations, and Environmental Assessments). Mr. Torres utilizes his experience to manage and author environmental documentation, often incorporating the results of complex technical documentation to substantiate conclusions within the document. Mr. Torres has also successfully prepared environmental documentation for a range of highly controversial projects subject to scrutiny by the general public, environmental organizations, and public agencies. Using his broad background and understanding of environmental constraints, Mr. Torres provides detailed, legally sound CEQA/NEPA compliance review and environmental documentation.

PROJECT UNDERSTANDING

The proposed project would include a new 11,215 square foot restaurant facility that could accommodate up to four tenants and include up to 2,276 square feet of outdoor patios. The facility would be located at 1555 Adams Avenue and would replace the existing Souplantation building. No variances or amendments would be required for the proposed project.

SCOPE OF WORK

Our approach to preparing the CEQA document for the proposed project is to first and foremost work collaboratively with City staff to prepare a CEQA document that is legally defensible, aids the City in the

decision-making process, and meets the City's needs in terms of schedule and budget. To accomplish these objectives, our approach is founded on the following principles:

- 1) Conduct a technically adequate and complete environmental analysis.
- 2) Create a reader-friendly CEQA document that utilizes a combination of narrative, figures, photographs, maps, tables, and other visual aids to help the reader understand the environmental consequences of the project.
- 3) Openly communicate with City staff to ensure the City's desires are met and expectations are exceeded.

For budgetary purposes, our proposal assumes that an IS/ND will be the appropriate CEQA document for the project. However, Michael Baker makes no presumptions regarding the appropriate CEQA document for the project, since such a determination cannot be definitively made until the environmental analysis is complete.

Our proposed scope of work to prepare and process an IS/ND for the project consists of the following tasks:

TASK 1.0 PROJECT KICK-OFF AND PROJECT CHARACTERISTICS

The work program will be initiated with a kick-off meeting with City and Applicant representatives to discuss the project features in greater detail. Prior to the kick-off, Michael Baker will distribute a meeting agenda and detailed memorandum, which will identify information needs. Based upon the detailed project information obtained at the project kick-off, Michael Baker will draft a preliminary project description for review and approval by City Staff.

TASK 2.0 CEQA INITIAL STUDY/ASSESSMENT

Michael Baker will prepare an Initial Study in accordance with the CEQA Guidelines. The Initial Study will include detailed explanations of all checklist determinations and discussions of potential environmental impacts. The Initial Study report will be presented as follows:

2.1 INTRODUCTION

The Introduction will cite the provisions of CEQA, the CEQA Guidelines, and the City of Costa Mesa CEQA Implementation procedures for which the proposed project is subject. This section will identify the purpose of the study and statutory authority as well as document scoping procedures, summary of the IS/ND format, listing of responsible and trustee agencies, and documentation incorporated by reference.

2.2 PROJECT DESCRIPTION

The Project Description section will detail the project location, background, and history of the project; discretionary actions; and project characteristics, goals and objectives, construction program, phasing, agreements, and required permits and approvals that are essential based on available information. Exhibits depicting the regional and site vicinity, site plan, and concept plan will be included in this section.

2.3 INITIAL STUDY CHECKLIST

This section will include a summary page of project information followed by an explanation of factors considered for potential impacts. The Initial Study Checklist will be presented in a four column layout, identifying: (1) potentially significant impacts, (2) potentially significant impacts unless mitigated, (3) less than significant impacts, and (4) issues resulting in no impacts.

2.4 ENVIRONMENTAL ANALYSIS

Michael Baker will evaluate the necessary information with respect to the existing conditions, the potential adverse effects of project implementation (both individual and cumulative), and measures to mitigate such effects. Environmental issues raised by City staff, agencies and the community, and any other relevant and valid informative sources will also be evaluated. The Environmental Analysis sections will provide vital supporting information for the conclusions rendered for the Environmental Checklist. This section will review the following issues:

A. Aesthetics/Light and Glare

This section will characterize the existing aesthetic environment and visual resources for the site, including a discussion of views within the site and views from surrounding areas. The analysis will also consider the potential for the modification of the surrounding character/quality.

B. Agricultural and Forest Resources

The project area is not designated for agricultural production or forest resources, thus, the Initial Study will confirm that there is no effect on Agricultural and Forest Resources.

C. Air Quality

The project is located within the South Coast Air Basin (SCAB), which is under the jurisdiction of the South Coast Air Quality Management District (SCAQMD). Baseline meteorological and air quality data from the nearest monitoring station will be utilized for the description of existing ambient air quality.

Michael Baker will quantify construction emissions with the California Emissions Estimator Model (CalEEMod). A general description of the major phases of construction and their timing will be required. The air pollutant emissions during construction will be compared to the SCAQMD regional thresholds of significance. Michael Baker will also qualitatively discuss naturally occurring asbestos impacts. Operational emissions will also be quantified.

D. Biological Resources

There are no wildlife or habitat areas within the project area. On-site conditions will be discussed.

E. Cultural Resources

The project site is located within an urban area and has been disturbed by previous development. This scope assumes Assembly Bill (AB) 52 consultation will be conducted by the City. Should the City

require assistance with this task, Michael Baker can accommodate this under a separate scope and fee.

F. Geology and Soils

The project will be evaluated for its potential to expose people or structures to potential substantial adverse effects involving fault rupture, strong seismic ground shaking, seismic-related ground failure (i.e., liquefaction), and landslides. This scope assumes the Applicant will provide a geotechnical report.

G. Greenhouse Gas/Global Climate Change

The analysis will determine the project's impact by determining if the project exceeds the SCAQMD screening threshold (per the *Center for Biological Diversity v. California Department of Fish and Wildlife* [Newhall Ranch] court case, a "Business-as-Usual" GHG threshold will not be utilized).

H. Hazards and Hazardous Materials

The hazardous materials analysis will include a summary of the existing regulatory conditions per the State Cortese Database Listing. An analysis of the proposed improvements will be conducted. Potential accidental conditions during construction and operations, involving hazardous materials will be analyzed. Project emergency access will also be considered.

I. Hydrology and Water Quality

The analysis will review existing and proposed condition conditions, FEMA, Flood Control District, and hydrology related CEQA guidelines. The analysis will be conducted at a planning level to determine impacts and propose mitigation measures, if necessary. This scope assumes the Applicant will provide a Water Quality Management Plan.

J. Land Use and Planning

Michael Baker will evaluate the proposed project in consideration of surrounding land uses and will analyze the relationship of the project to applicable planning policies.

K. Mineral Resources

The analysis will note that there is no effect of the project upon mineral resources.

L. Noise

Michael Baker will review applicable noise and land use compatibility criteria for the project area. Noise standards regulating noise impacts will be discussed for land uses on and adjacent to the project site. Noise impacts from construction sources will be analyzed based on the anticipated equipment to be used, length of a specific construction task, equipment power type (gasoline or diesel engine), horsepower, load factor, and percentage of time in use. Operational noise sources will address on- and off-site vehicle traffic as well as on-site noise generating activities. Analysis requirements will be

based on the sensitivity of the area, specific construction activities, and Noise Ordinance specifications.

M. Population and Housing

The project does not have the ability to adversely affect resources in this category.

N. Public Services

Michael Baker will contact potentially affected agencies to confirm relevant existing conditions and project impacts. The discussion will focus on the potential alteration of existing facilities, extension or expansion of new facilities, and the increased demand on services based on the proposed uses.

O. Recreation

The analysis will address the project's impact on local recreation facilities.

P. Transportation and Traffic

There would be an overall reduction in square footage (including patios) of 233 square feet. As such, it is anticipated that there would be a decrease in trips, or they would remain relatively the same. Additionally, in 2010, when the Azulon Senior apartment project was approved for the south part of the development, it was determined that approximately 21,475 square feet of development area would still remain unused on this portion of the property. In order to quantify the potential reduction in trips, Michael Baker will prepare a trip generation assessment to calculate the project traffic based on the trip rates published in the Institute of Transportation Engineers Trip Generation Manual (9th Edition, 2012). A memorandum will summarize the methodologies and results of the trip generation assessment and the memorandum will be incorporated into the IS/ND. It is our understanding that the City of Costa Mesa will not require a full traffic study for the project, but requires a memorandum to document that the project would not cause any traffic impact based on the low trip generation.

Q. Utilities

Due to the nature of the development and fact that it is proposed to be located on an existing developed site with similar uses, the project is not anticipated to result in an additional significant demand for utilities.

R. Mandatory Findings of Significance

This section will focus on cumulative effects and considerations.

2.5 INITIAL STUDY DETERMINATION

The determination page will conclude the appropriate action based upon the Initial Study evaluation.

2.6 GRAPHIC EXHIBITS

The environmental document will include exhibits to enhance the written text and clarify the project's potential environmental impacts. Michael Baker will use state-of-the-art computer design equipment and techniques to create professional quality, black and white or full color exhibits, dividers, and covers for the environmental document and Appendices. All exhibits will be 8½" x 11" in size and will be provided to the City in a jpeg or pdf, as requested by City staff.

3.0 ADMINISTRATIVE DRAFT INITIAL STUDY

In order to save natural resources, Michael Baker will submit an electronic copy of the Draft Initial Study for review and comment by the City. Michael Baker will also submit an electronic "proofcheck copy" of the final draft document, which will incorporate one complete set of comments received from the City. Changes to the draft document will be highlighted to assist the review. Additional hard copies can be provided by Michael Baker, as requested by the City, for an additional fee on a time-and-materials basis.

Deliverables for the Administrative Draft Document

- One (1) electronic copy of the Administrative Draft document, exhibits, and Technical Appendices
- One (1) electronic copy of the Proofcheck Draft document, exhibits, and Technical Appendices

4.0 NEGATIVE DECLARATION PREPARATION

With a conclusion in the Initial Study that no significant environmental effects will occur as a result of implementation of the project, a Negative Declaration will be prepared. Following this determination, Michael Baker will prepare the Notice of Intent (NOI) to Adopt for City review and the electronic (PDF format) of the Public Review Draft Negative Declaration. Michael Baker will file the NOI at the Orange County Recorder's Office. Michael Baker will provide the submittal to the State Clearinghouse and additional distribution as directed by the City.

Deliverables for the Draft Environmental Document

- Fifteen (15) copies of the State Clearinghouse Summary Form
- Fifteen (15) CDs that contain the Draft Document for State Clearinghouse submittal
- Thirty (30) copies of the Notice of Intent
- Ten (10) hard copies of the IS/ND
- One (1) electronic copy of the Draft document, exhibits, and Technical Appendices
- Notice of Intent Filing

Additional hard copies can be provided by Michael Baker, as requested by the City, for an additional fee on a time-and-materials basis.

5.0 FINAL INITIAL STUDY/ NEGATIVE DECLARATION

5.1 RESPONSE TO COMMENTS

Michael Baker will respond to comments received on the Draft Environmental document during the public review period, and any additional comments raised during the public hearings. Michael Baker will prepare

thorough, reasoned, and sensitive responses to relevant environmental issues. The draft responses will be prepared for review by City Staff.

5.3 COMPLETION OF FINAL ENVIRONMENTAL DOCUMENT

Michael Baker will prepare a draft final document for City review and approval. The Final document will consist of the revised Draft text, as necessary to address the comments received on the Draft document. The Final document will include a purpose subsection, reference the review process, comments received, responses and any required edits/updates to the Public Review document. Should mitigation be necessary, a Mitigation Monitoring and Reporting Program will be provided for \$270. Michael Baker will prepare the Notice of Determination and will file the notice at Orange County Recorder's Office. This scope of work excludes the required fees for the California Department of Fish and Wildlife (CDFW).

Deliverables for the Final Environmental Document

- One (1) electronic copy of the Draft Responses to Comments
- One (1) electronic copy of the Final Responses to Comments

Deliverables for the Final Environmental Document

- One (1) unbound camera-ready original of the Final document, exhibits and Technical Appendices
- One (1) electronic copy of Final document, including exhibits and Technical Appendices
- Notice of Determination filing

Additional hard copies can be provided by Michael Baker, as requested by the City, for an additional fee on a time-and-materials basis.

6.0 PROJECT MANAGEMENT AND HEARINGS

Mr. Eddie Torres, will be responsible for management and supervision of the environmental review as well as consultation with the City. Mr. Torres will undertake consultation and coordination of the project and the environmental review for compliance with CEQA requirements. Mr. Torres will also attend scheduled staff meetings and will represent the Project Team at public hearings and make presentations as necessary. Should the City determine that additional meetings, beyond the meetings listed below, are necessary, services will be provided under a separate scope of work on a time and materials basis. The estimated cost for additional meetings is approximately \$600 per person.

Meeting Attendance

- One (1) kick-off meeting with City Staff (Refer to Task 1.0); and
- One (1) Planning Commission Hearing.

SCHEDULE

The Michael Baker project team is committed to meeting any reasonable schedule that the City desires. During the kickoff meeting, we will work with the City to update the schedule as necessary, review milestones and expectations for deliverables, and discuss any "critical path" items and information needs critical to the schedule.

Kick-Off Meeting	Week 1
Michael Baker prepares Administrative Draft Initial Study/ND	Weeks 1 - 3
City Review of Administrative Draft Initial Study/ND	Week 4
Michael Baker completes Draft Initial Study/ND	Week 5
City review of Check Copy Draft Initial Study/ND	Week 5
Print and distribute Public Review Initial Study/ND	Week 6
30-Day Public Review	Weeks 6 - 9
Michael Baker prepares Final Initial Study/ND	Week 10
Print and distribute Final Initial Study/ND	Week 10
Public Hearings	TBD

FEE

Our proposed fee to prepare an IS/ND for the proposed project is presented in the following table.

TASK	Total Cost
1.0 PROJECT KICK-OFF/PROJECT CHARACTERISTICS	\$1,510
2.0 CEQA INITIAL STUDY/ASSESSMENT	
2.1 Introduction	\$180
2.2 Project Description	\$1,530
2.3 Initial Study Checklist	\$90
2.4 Environmental Analysis	\$12,855
2.5 Initial Study Determination	\$205
2.6 Graphic Exhibits	\$680
3.0 ADMINISTRATIVE DRAFT INITIAL STUDY	\$2,840
4.0 NEGATIVE DECLARATION	\$205
5.0 FINAL IS/ND	
5.1 Response to Comments	\$2,260
5.2 Mitigation Monitoring and Reporting Program	\$270
5.3 Completion of Final Environmental Document	\$745
6.0 PROJECT MANAGEMENT AND MEETINGS	\$3,280
ENVIRONMENTAL DELIVERABLES	\$2,500
TOTAL COSTS	\$31,740

ASSUMPTIONS

Michael Baker makes no assumptions regarding the appropriate CEQA document for the project. Should the environmental analysis reveal that an IS/ND is the appropriate CEQA document for the project, Michael Baker would be available to prepare the document per the mutual agreement of the City and Michael Baker.

Michael Baker assumes that no technical studies other than those identified in the proposed scope of work provided herein will be required to complete the CEQA documentation for the project. If additional technical studies become necessary, Michael Baker would be available to conduct the studies per the mutual agreement of the City and Michael Baker.

Michael Baker has included one City review of administrative draft versions of all documents included in our scope of work, as well as one proof-check draft version. Should multiple reviews beyond those included in our scope of work be requested by the City, additional Michael Baker staff time may be necessary beyond the established budget. Should such a scenario arise, we would work with the City to seek mutually agreeable budget augmentation.

Michael Baker assumes that the project description will not substantively change during the course of the assignment. Should the project description change during the course of work, additional Michael Baker staff time may be necessary beyond the established budget to revise/update the document and the analysis. Should such a scenario arise, we would work with the City to seek mutually agreeable budget augmentation.

CLOSURE

Michael Baker appreciates the opportunity to submit this proposal. Our proposed scope of work and corresponding fee have been developed to meet the City's needs and to satisfy CEQA requirements for the proposed project. Michael Baker stands ready to proceed with the proposed scope of work upon the City's authorization. If you have any questions regarding this proposal, please do not hesitate to contact me at (949) 855-3612 or egtorres@mbakerintl.com.

Sincerely,



Eddie Torres
Associate Vice President
Environmental Services