

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
JOHNSON FAVARO**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 21st day of November, 2023 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and JOHNSON FAVARO, a California Limited Liability Partnership ("Consultant").

RECITALS

A. City proposes to utilize the services of Consultant as an independent contractor to provide architectural and engineering design and document preparation services for Lion Park Projects Café, as more fully described herein; and

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

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

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

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

1.0. SERVICES PROVIDED BY CONSULTANT

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

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

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

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is

satisfactory; and/or

(c) Terminate the Agreement as hereinafter set forth.

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

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

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

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

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

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "A," attached hereto and made a part of this Agreement. Consultant's total compensation shall not exceed \$ 130,250.00.

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

such additional services or additional compensation shall be barred and are unenforceable.

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

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

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, pandemics (excluding COVID-19), material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party (each, a "Force Majeure Event"). If a party experiences a Force Majeure Event, the party shall, within five (5) days of the occurrence of the Force Majeure Event, give written notice to the other party stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect. Any suspension of performance shall be of no greater scope and of no longer duration than is reasonably required and the party experiencing the Force Majeure Event shall use best efforts without being obligated to incur any material expenditure to remedy its inability to perform; provided, however, if the suspension of performance continues for sixty (60) days after the date of the occurrence and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure Event, the parties shall meet and discuss in good faith any amendments to this Agreement to permit the other party to exercise its rights under this Agreement. If the parties are not able to agree on such amendments within thirty (30) days and if suspension of performance continues, such other party may terminate this Agreement immediately by written notice to the party experiencing the Force Majeure Event, in which case neither party shall have any liability to the other except for those rights and liabilities that accrued prior to the date of termination.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue until ending on November 6, 2026, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by two 2 additional one 1 year periods upon mutual written agreement of both parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of

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

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

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

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent 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) per occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy

limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

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

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

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

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

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

6.0. GENERAL PROVISIONS

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

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

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

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

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

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

IF TO CONSULTANT:

Johnson Favaro
5898 Blackwelder Street
Culver City, CA 90232
Tel: (310) 559- 5720
Attn: Brian Davis

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754- 5096
Attn: Arash Rahimian

Courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Dept. | Purchasing

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

immediate termination of this Agreement by City.

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

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

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

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in the performance of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon negligence, recklessness, or willful misconduct in the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. In no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time,

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

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

6.21. 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.

6.22. 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.

6.23. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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

6.25. 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.

6.26. 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.

6.27. 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.

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

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CONSULTANT

[Signature]
Signature
Steve Johnson, Principal
[Name and Title]

Date: 11/27/23

CITY OF COSTA MESA

[Signature]
Lori Ann Farrell Harrison
City Manager

Date: 12/11/23

ATTEST:

[Signature] 12/12/2023
Brenda Green
City Clerk



APPROVED AS TO FORM:

[Signature]
Kimberly Hall Barlow
City Attorney


Date: 12/5/23

APPROVED AS TO INSURANCE:

[Signature]
Ruth Wang
Risk Management

Date: 12/1/23

APPROVED AS TO CONTENT:


_____ ^{12/4/23} A.Y.
Arash Rahimian
Project Manager

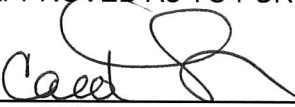
Date: 12/1/23

DEPARTMENTAL APPROVAL:


_____ ^{12/4/23}
Raja Sethuraman
Director of Public Works

Date: 12/4/23

APPROVED AS TO PURCHASING:


_____ ^{12/20/23}
Carol Molina
Finance Director

Date: 12/20/23

EXHIBIT A
CONSULTANT'S PROPOSAL



New Donald Dungan Library, Neighborhood Community Center and Park Improvements Project – Café Kiosk

PROJECT SCOPE

The Project, located in Lions Park, includes the vertical construction of a new approximately 1,000 SF Café Kiosk and site improvements to include new decking.

CAFÉ KIOSK

The Project includes vertical construction of the new approximately 1,000 SF Café Kiosk, which is a snack and beverage service kiosk to serve the park and all facilities in the park. The site improvements include approximately 1,100 SF of new wood decking along the south side of the kiosk.

BASIC DESIGN SERVICES

The Consultant as Architect-of-Record will manage and coordinate all design and document preparation tasks through the phases identified below. The Consultant shall provide the services of external sub-consultants, or professional expertise from its own staff in at least the following disciplines:

- Structural Engineering
- Mechanical, Electrical & Plumbing Engineering
- Landscape Architecture
- Lighting Design
- Food Service/Kitchen Design
- Information/Technology- Data Telecom
- Obtaining Health Department Permit

REPACKAGE CONSTRUCTION DOCUMENTS

1. Drawings and specifications will need to be repackaged into a permittable and biddable set. The Consultant shall prepare Café Kiosk Construction Documents consisting of drawings and other documents setting forth in detail the requirements for construction of the Project. The Consultant shall prepare complete drawings and specifications as are necessary for obtaining a Building Permit under CBC 2022, developing complete bids for the Café Kiosk, and for properly executing the Project work. Café Kiosk Drawings and Specifications shall set forth in detail all of the following: 1) the Project construction work to be done; 2) the materials, workmanship, finishes, and equipment required for the Project; and 3) the utility service connection equipment and site work.
2. The Café Kiosk Construction Documents and Specifications must be in such form as will enable the Consultant and the City to secure the required permits and approvals from the Building Department and Health Department under CBC 2022.

PERMITS AND REBIDDING

1. The City, with input and assistance from the Consultant, shall develop the documents describing Contract, General Conditions, Supplementary General Conditions, Special Conditions, other necessary conditions of the contract, Division One of the Project Manual (i.e. City standards for construction, specifications, and the contract), Sample Forms, prequalification requirements and forms, and any other certifications and documents required by laws, rules and regulations which may be reasonably required in order to obtain General Contractor bids responsive to the Construction Documents. Excluded work in this phase includes development and preparation of: 1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms and 2) the Conditions of the contract for Construction (General, Supplementary and other Conditions).
2. Upon completion of Café Kiosk Construction Documents, they shall be submitted to the appropriate federal, state, regional or local permitting agencies concerned with the Project.
3. Upon incorporation of permitting agency comments the Consultant shall schedule a back-check review with the permitting agency. Any back check changes required by the permitting agency shall be incorporated into the Construction Documents.
4. During the Café Kiosk Bidding Process, the Consultant shall respond to requests for information or clarification. The Consultant shall respond only to questions or requests for clarifications concerning the Construction Documents that are submitted by the City or the Contractor. Any such questions or requests for clarifications from bidders must be submitted through the City/Contractor.
5. The Consultant shall prepare for Café Kiosk any required addenda to the Construction Documents in the City's format for approval and distribution by the City.

CONSTRUCTION ADMINISTRATION PHASE

1. All Construction Administration services identified below are provided for the Café Kiosk.
2. The Consultant shall provide general administration of the Construction Documents and the work performed by the Contractor and Sub-contractors. The Consultant shall observe work executed from the Construction Documents.
3. The Consultant shall provide services during the Construction Phase under management and oversight of the City's Project Manager (PM) for the Project.
4. All Consultant communication with the contractor during Bidding and Construction Phases shall be through the PM.

5. The Consultant shall review the project schedule, schedules of shop drawing submittals and schedules of values prepared by the construction contractor and consult with the PM concerning their acceptability.
6. The Consultant shall review and provide responses to Requests for Information (RFI) prepared by the construction contractor and consult with the PM concerning their acceptability when appropriate.
7. The Consultant shall conduct site visits to observe each contractor's work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such visits shall be conducted weekly or as often as are necessary and appropriate to the stage of construction. Such visits may be in conjunction with the Project's construction meetings.
8. The Consultant shall cause all architects, engineers and other consultants, as may be hired by the Consultant or City, to observe the work completed under their disciplines as required and approve and review all test results for general conformance with the Construction Documents.
9. The Consultant shall attend all construction meetings and confirm written reports/minutes produced by the PM after each construction meeting in order to keep the City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the PM's sole discretion, but no less than weekly.
10. The Consultant shall make written reports to the PM as necessary to inform the PM of problems arising during construction, changes contemplated as a result of such problems and progress of the Project work. The Consultant shall not have control over the acts or omissions of the contractors, subcontractors or their agents or employees, or of any other persons or entities performing or supplying portions of the work which were not employed or hired by the Consultant.
11. The Consultant shall review, process, and approve all submissions for compliance with the Construction Documents and respond to such submissions in a timely manner to not delay the progress of the schedule or construction work. The Consultant's review and response shall be done in such a manner to ensure the timely and uninterrupted progress of the Project work.
12. The Consultant shall evaluate and advise the PM of any Change Requests and material change(s) which may be requested or necessary in the Project plans and specifications. The Consultant agrees to comply with the PM's change request process and shall provide the PM with its opinion as to whether such change requests should be approved.

13. The Consultant, upon request by the City or City's representative, shall examine and provide feedback on the construction contractor's application for payment based on the Consultant's observations at the site. Such certification for payment shall not be a representation that the Consultant has: 1) made exhaustive or continuous on-site inspections of the work for which payment is sought; 2) reviewed construction means, methods, techniques, sequences or procedures for the work for which payment is sought; 3) ascertained how and for what purpose the contractor has used money previously paid; or 4) certified that the work for which payment is sought is without defects.
14. The Consultant shall determine the date of substantial completion, in consultation with the PM, and complete and submit the appropriate form to the PM.
15. After determining that the Project is substantially complete, the Consultant shall participate in the inspection of the Project and shall prepare a Punch List of all remaining deficiencies and minor items needed to be corrected or completed on the Project. The Consultant shall notify the PM of all Punch List Items.
16. The Consultant shall cause all other architects, engineers, and other consultants, as may be hired by the Consultant, to file any and all required documentation with governmental authorities necessary to close out the Project. The Consultant shall assist the PM in obtaining such documentation from all other architects, engineers, or other consultants.

PROJECT CLOSE-OUT PHASE

1. All Project Close-out Phase services identified below are provided for the Café Kiosk.
2. The Consultant shall incorporate all RFI, Addenda and Bulletins and Contractor as-built files into the Construction Documents and issue BIM digital files authored in an approved software application, as described by the City BIM Standards. Graphic Design/Signage Design document files shall be delivered as Illustrator files and in PDF format only.
3. The Consultant shall review the Contractor furnished as-built files for completeness.
4. The Consultant shall review all warranties, guarantees and final close-out material provided by the contractor and sub-contractors.
5. The Consultant shall cause all other engineers and other consultants, as may be hired by the Consultant to file any and all required documentation with all governmental agencies necessary to close out the Project.

AUTHORIZED ADDITIONAL SERVICES

1. The Consultant shall consult with additional specialists during the foregoing phases to the extent necessary. The fees for all consultants in those areas as required are included in Authorized Additional Services. The fees for required Additional Services of the above, beyond the scope of this project as described here, and as requested by the City shall be paid directly by the City and any coordination required by the Consultant shall be billed as Additional Services.
2. The Consultant shall bill as Additional Services all work that is the result of a substantial change directed by the City, that necessitates going back to, or repeating a part of or the entirety of any phase already approved and complete. Preparation of documents, applications, and/or other time spent on obtaining variances, or easement adjustments shall be billed as Additional Services.
3. Additional Services may be authorized by the City. If authorized, such Additional Services and Reimbursable Expenses associated with the Additional Services will be compensated at the rates and in the manner set forth in "Basis of Compensation" below, unless a flat rate or some other form of compensation is mutually agreed upon by the parties.
4. Additional Services mean 1) any work or Services which is determined by the City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Consultant to perform at the execution of this Agreement; 2) revisions in Drawings or Specifications or other documents when such revisions are caused by conflicts to previously issued instructions of the City; 3) additional Drawing, Specification or document preparation and/or administration of work on portions of the Project separately bid; or 4) any work listed as Additional Services.

GENERAL REQUIREMENTS

1. Project fees for this Project are based on Design/Bid/Build project delivery.
2. The City may be requested to supply the Consultant with the necessary information to determine the proper location of all improvements on and off site, including existing record drawings in the City's possession. The Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough survey of site conditions.
3. The City will provide existing record drawings and provide any supplemental information to the Consultant which is available. The Consultant shall not be responsible for the accuracy of the information or existing record drawings, except to the extent that any inaccuracy should have reasonably been detected by the Consultant, pursuant to its standard of care and visual observation of existing conditions.

4. The Consultant and the Consultant's consultants shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure to hazardous materials or toxic substances in any form at the Project site.
5. All plans, specifications, original or reproducible transparencies of working drawings, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other Project Documents prepared pursuant to this Agreement shall be and remain the property of the City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultant, the Project Documents shall be the property of the City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, the Consultant shall provide to the City copies of all Project Documents required by the City. In addition, Consultant shall retain copies of all Project Documents on file for a minimum of seven (7) years following completion of the Project, and shall make copies available to the City upon the payment of reasonable duplication costs. Before destroying Project Documents following this retention period, Consultant shall make a reasonable effort to notify the City and provide the City with the opportunity to obtain the documents.
6. The Consultant grants to the City the right to use and reuse all or part of the Project Documents, at the City's sole discretion and with no additional compensation to the Consultant, for the following purposes: A) The construction of all or part of this Project; B) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time; C) The construction of another project by or on behalf of the City for its ownership and use. The City is not bound by this Agreement to employ the services of the Consultant in the event such documents are used or reused for these purposes. The City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant. The use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit the City's right to recover for latent defects or for errors or omissions of the Consultant for the Project.
7. Any use or reuse by the City of the Project Documents on any project other than this Project without employing the services of the Consultant shall be at the City's own risk and liability with respect to third parties. If the City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's architect seal from the Project Documents and indemnify and hold harmless the Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project. The Consultant shall not be responsible or liable for any revisions to the Project Documents made by any party other than the Consultant, a party for which the Consultant is legally responsible or liable, or anyone approved by the Consultant.

8. This Agreement creates a non-exclusive and perpetual license for the City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. The Consultant shall require any and all subcontractors and consultants to agree in writing that the City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.
9. The Consultant represents that the Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that the Consultant prepares or causes to be prepared pursuant to this Agreement. The Consultant makes no representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than the Consultant and provided to the Consultant by the City.
10. Upon 100% completion of the Construction Documents and Specifications, the Consultant shall provide the City with one hardcopy for reproduction.
11. The Consultant shall provide coordinated Construction Document level BIM digital files authored in an approved software application. BIM files are to be used by the Contractor in developing 4D and 5D technology and processes, shop drawings, coordination drawings and as-built drawings for this project. The Consultant is responsible for running clash detections as needed to ensure proper coordination between the Consultant and Sub-Consultants. Specifications shall be provided in Microsoft Word format. Graphic/Signage Design documents shall be provided as Illustrator and PDF files only. Acceptance of these electronic files constitutes acknowledgement of the conditions of this agreement between the Consultant and the City.
12. The Consultant is providing, by agreement with the City, materials stored electronically. The parties recognize that data, plans, specifications, reports, documents, or other information recorded on or transmitted as electronic media (including but not necessarily limited to "CAD documents" and "BIM") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. The signed and/or stamped hard copies of the Architect's Instruments of Service are the only true contract documents of record.

CITY'S OBLIGATIONS

1. The City shall provide the Consultant prior to the project start date confirmation of Project Schedule and Project Budget.
2. City's responsibilities shall include 1) retaining consultant(s) to conduct materials testing and inspection or to conduct any other environmental or hazardous materials testing and inspection pursuant to any other applicable laws, rules or regulations; 2) pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval

jurisdiction over the Project; and 3) designate a person(s) to act as representative for the performance of this Agreement (City's Representative).

- The City's Representative shall render decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of services.

RESPONSIBILITY FOR CONSTRUCTION COST

- No cost estimating services are included with this proposal.

BASIS OF COMPENSATION

Based on the Scope of Work and Services defined above, Johnson Favaro and its consulting team propose a Professional Services Lump Sum Fee and Hourly Rate per Table 1 below. The fee will be billed monthly in proportion to the work completed.

For a Fee Summary by Consultant, see Table below:

PROFESSIONAL SERVICES FEE- LIONS PARK CAFÉ KIOSK			
HOURLY RATES & LUMP SUM FEE SUMMARY BY CONSULTANT			
	POSITION	HOURLY RATE (USD)	LUMP SUM FEE
Architecture		No Cap	\$41,500
	Principal Architect	\$250	
	Associate Principal	\$200	
	Senior Design Principal	\$180	
	Design Associate	\$150	
	Designer	\$140	
	Junior Designer	\$120	
	Administration	\$120	
Structural Engineering		No Cap	\$12,500
	Chief Executive Officer	\$325	
	Principal	\$280	
	Senior Vice President	\$275	
	Vice President	\$270	
	Senior Project Manager	\$250	
	Senior Consultant	\$240	
	Senior Project Engineer	\$225	
	Project Engineer	\$200	
	Senior Designer	\$160	
	Designer	\$150	
	Engineering Coordinator	\$125	
	Senior BIM/CAD Coordinator	\$125	
	BIM/CAD Coordinator	\$165	
	Project Accounting	\$100	

Mech. & Plumb Engineering	No Cap	\$11,600
	Principal	\$225
	Engineer	\$195
	Project Manager	\$185
	Sr. Designer	\$160
	Designer	\$140
	CAD Drafting	\$100
	Clerical	\$80
Electrical Engineering	No Cap	\$2,800
	Principal	\$200
	Engineer	\$175
	Project Manager	\$165
	Sr. Designer	\$140
	Designer	\$120
	CAD Drafting	\$90
	Clerical	\$70
Lighting	No Cap	\$4,900
	Principal	\$220
	Senior Designer	\$195
	Associate Designer	\$165
	Designer	\$120
Landscape Architecture	No Cap	\$15,000
	President	\$385
	Partner	\$300
	Principal	\$265
	Director	\$240
	Associate Director	\$225
	Senior Associate / Studio Leader	\$210
	Associate / BIM Manager	\$195
	Project Designer	\$185
	Designer	\$170
	Intern	\$135
	Clerical	\$90
Food Service	Not to Exceed Lump Sum Fee	\$9,500
	Designer	\$240
	Project Management	\$240
	CAD/Revit Drafting	\$135
	Administration	\$95
	*Plan Check Fees for Health Permit	\$750
Information Technology/Audiovisual	No Cap	\$11,700
	Principal, Director	\$290
	Project Consultant	\$220
	Designer	\$200
	CAD/BIM Support	\$130
*Unforeseen Conditions Allowance Directed by the City		\$20,000
REPACKAGE, REPERMIT, REBID, & CA SERVICES TOTAL		\$130,250

REIMBURSABLES

The City shall reimburse the Consultant a sum for its reasonable out-of-pocket expenses that are incurred and paid for by the Consultant in furtherance of performance of its obligations under this agreement. Reimbursables are included in the Fee for Basic/Authorized Additional Services. The categories of expenses include:

- Printing and reproduction costs
- Shipping, overnight mail, postage, messenger and other handling of drawings and documents.
- Long distance telephone calls outside of the 213, 310, 562, 626, 323, 714, 949, 951 and 909 area codes.
- Renderings and special presentation models other than specified in the Proposal requested by the City.
- Additional Consultants not considered a part of Basic Services
- Fees paid to third parties for securing approval of authorities having jurisdiction over the project.

PRELIMINARY PROJECT SCHEDULE

Exact schedule to be determined.

The Consultant shall advise the City of any adjustments to the preliminary project schedule. Evaluation of the project schedule as well as subsequent estimates of the project schedule prepared by the Consultant, represent the Consultant's best judgment as a design professional familiar with community planning, design and construction. It is recognized, however, that the Consultant has no control over the performance of the City, the City Project Manager, the City of Costa Mesa Building Department or the general contractor in adhering to the project schedule. Accordingly, the Consultant cannot and does not warrant or represent that the project schedule will not vary from that represented herein, nor from any schedule estimate or evaluation prepared or agreed to by the Consultant.

EXCLUSIONS

1. Material testing
2. Hazardous materials abatement scope related to survey of existing conditions, drawings, reports, documents and or specifications.
3. Methane extraction systems
4. Off-site public improvements, not described in this Proposal including adjoining street widening.
5. Planning for Interim Housing or relocation drawings/diagrams
6. Physical presentation models
7. Partnering Workshops
8. Additional cost estimates or revisions to completed cost estimates
9. Design/Coordination of a Distributed Antennae System (DAS)
10. Ordering Cable or Satellite TV service
11. Design of the Telco utilities
12. Permitting through the City of Costa Mesa
13. LEED services
14. Cost estimating services

ADDITIONAL SERVICES

Additional Services shall be provided if authorized or confirmed in writing by the Client. These services shall be subject to an additional fee. Unless otherwise agreed prior to the work being carried out, our fees for any additional services will be based on time expended at our normal billing rates prevailing at the time the work is carried out.

Additional Services will be billed on an hourly basis at the rates shown below:

Principal Architect	\$250
Associate Principal	\$200
Senior Design Principal	\$180
Design Associate	\$150
Designer	\$140
Junior Designer	\$120
Administration	\$120

EXHIBIT B

CITY COUNCIL POLICY 100-5

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
 - B. Establishing a Drug-Free Awareness Program to inform employees about:

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

1. The dangers of drug abuse in the workplace;
 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.