

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

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of the 1st day of July, 2020 ("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 prepare a Class 32 Categorical Exemption Technical Evaluation Memorandum in connection with the proposed development project at 2750 Bristol Street, Costa Mesa, 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" (the "Project") 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 Scope of Work, attached hereto as Exhibit "A," and Consultant's Proposal, attached hereto as Exhibit "B," both 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. Notwithstanding the foregoing, if a conflict between such laws and ordinances arises, Consultant shall promptly advise City of the situation in writing, at which time both parties shall work together to seek a resolution and City will not interpret such conflict as a breach of Consultant's responsibilities under this section.

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 B. Consultant's total compensation shall not exceed Nineteen Thousand Nine Hundred Ninety Dollars (\$19,990.00).

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. Said services shall be performed in strict compliance with the Project Schedule set forth in Exhibit B. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, 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 two (2) years, ending on June 30, 2022, unless previously terminated as provided herein or as otherwise agreed to in writing by the 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 claim and aggregate. 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:**

Michael Baker International, Inc.  
5 Hutton Centre Drive, Suite 500  
Santa Ana, CA 92707  
Tel: (949) 855-3612  
Attn: Eddie Torres

**IF TO CITY:**

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5611  
Attn: Mel Lee

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, with counsel approved by City, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees from and against any and all claims, actions, suits or other legal proceedings, including defense costs and reasonable attorneys' fees to defend such claims, actions, suits or other legal proceedings in an amount proportionate to Consultant's comparative fault as determined by the court, brought against the City, its elected officials, officers, agents and employees to the extent caused by the negligent or wrongful acts, errors, or omissions of Consultant, its officers, employees, agents and/or authorized subcontractors in the performance of this Agreement. The defense obligation provided for hereunder 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 negligently 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 reasonable 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. 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 and Electronic Signatures. 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. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

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.

**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**

 Date: 7/24/20  
Signature  
Eddie Trillo, Associate Vice President  
[Name and Title]

**CITY OF COSTA MESA**

 Date: 8/12/20  
Lori Ann Farrell Harrison  
City Manager

**ATTEST:**

 8-13-2020  
Brenda Green  
City Clerk



**APPROVED AS TO FORM:**

 Date: 8/11/20  
Kimberly Hall Barlow  
City Attorney

**APPROVED AS TO INSURANCE:**


 Date: 8/15/2020  
Ruth Wang  
Risk Management

APPROVED AS TO CONTENT:

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

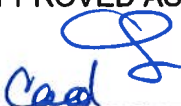
Date: 8/5/20

DEPARTMENTAL APPROVAL:

  
\_\_\_\_\_  
Barry Curtis  
Economic and Development Services  
Director

Date: 8/5/20

APPROVED AS TO PURCHASING:

  
\_\_\_\_\_  
Carol Molina  
~~Acting~~ Finance Director

Date: August 4, 2020

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

**Scope of Work for No. 1 Collision  
2750 Bristol Street**

The City of Costa Mesa is seeking a consultant to evaluate a proposed development at 2750 Bristol Street in the City of Costa Mesa. The property is zoned C1 (Local Business District) and has a General Plan Land Use Designation of GC (General Commercial). The property is 65,523 square feet (1.5 acres) in size and contains a 9,494-square-foot automatic car wash building and a 2,628-square-foot oil change building. Both buildings are one-story. The project applicant, No. 1 Collision, is proposing to demolish the existing buildings and construct a new, 2-story, 32,815-square-foot luxury auto body repair facility. Service is by appointment only; auto storage spaces and service bays are provided on the interior of the building with a limited number of surface parking lot spaces for customers and employees also provided.

Staff is requesting a proposal for a preliminary analysis potentially leading to a Class 32 exemption for CEQA compliance purposes. The applicant will provide trip generation information as approved by the City's Transportation Division for use by the consultant. The City's Transportation Division has categorized the use as a "very low" trip generator based on its operational characteristics.

**TASK 1 – EVALUATION MEMO INCLUDING TECHNICAL ANALYSES**

The City is exploring utilizing a Class 32 Categorical Exemption (CEQA Guidelines Section 15332, In-Fill Development) for the proposed project and is requesting a Technical Evaluation Memo that describes the potential environmental effects of the project, including technical evaluations as necessary relating to traffic, noise, air quality and water quality pursuant to CEQA Guidelines Section 15332(d) and any other potentially significant environmental effects that warrant evaluation. Ultimately, the memo must come to a conclusion as to whether an exemption is appropriate.

Please describe the information needed to perform this analysis from both the City and the applicant.

*Deliverable*

Technical Evaluation Memo that is adequate for CEQA compliance purposes and describes the potential environmental effects of the project and includes a determination regarding utilizing the Class 32 Categorical Exemption (In-Fill Development).

**EXHIBIT B**  
**CONSULTANT'S PROPOSAL**

June 29, 2020

Silvia Kennerson  
Senior Management Analyst  
**CITY OF COSTA MESA**  
77 Fair Drive  
Costa Mesa, CA 92626

**RE: PROPOSAL TO PREPARE A CLASS 32 CATEGORICAL EXEMPTION TECHNICAL EVALUATION MEMORANDUM FOR AN AUTOBODY REPAIR FACILITY LOCATED AT 2750 BRISTOL STREET, COSTA MESA**

Dear Ms. Kennerson:

Michael Baker International (Michael Baker) is pleased to submit this proposal to prepare a Class 32 Categorical Exemption Technical Evaluation Memorandum (CE Technical Evaluation Memo) in support of an autobody repair facility at 2750 Bristol Street, Costa Mesa (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 CE Technical Evaluation Memo.

#### **PROJECT TEAM**

The Michael Baker project team will be led by our project manager, Kristen Bogue. Ms. Bogue has extensive experience in preparing and managing CEQA documents, including Class 32 CE analyses, and has been with Michael Baker for 15 years. Ms. Bogue is a recognized leader in Environmental Impact Reports, Negative (or Mitigated Negative) Declarations, and Environmental Assessments). Ms. Bogue utilizes her experience to manage and author environmental documentation, often incorporating the results of complex technical documentation to substantiate conclusions within the document. Ms. Bogue 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. Most recently, Ms. Bogue managed the preparation of a Class 32 CE Memo for the Chen Mini Warehouse Auto Storage Facility Project and the Environmental Impact Report for the One Metro West Project with the City of Costa Mesa. Using her broad background and understanding of environmental constraints, Ms. Bogue provides detailed, legally sound CEQA/NEPA compliance review and environmental documentation.

#### **PROJECT UNDERSTANDING**

The City of Costa Mesa (City) is seeking a consultant to prepare a Class 32 CE Technical Evaluation Memo, including the technical studies necessary to demonstrate whether the project meets the conditions for a Class 32 CE, pursuant to CEQA Guidelines Section 15332, *In-Fill Development Projects*. The project proposes to demolish existing on-site buildings and construct a new, two-story, 32,815-square foot luxury auto body repair facility. Service would be by appointment only. Auto storage spaces and service bays



would be provided in the building interior with a limited number of surface parking lot spaces for customers and employees.

## SCOPE OF WORK

Michael Baker will work closely with the City to ensure that the environmental review process accurately addresses the potential project impacts and ultimately complies with the State and City's environmental review processes.

According to CEQA Guidelines Section 15300, *Categorical Exemptions*, various classes of projects have been determined to not have a significant effect on the environment, thus, would be exempt from the provisions of CEQA. In-fill development projects are one class of projects (i.e., Class 32), from among others, found not to have a significant effect on the environment, and declared to be categorically exempt from the requirement to prepare environmental documents.

CEQA Guidelines Section 15332, *In-Fill Development Projects*, specifies that Class 32 consists of projects characterized as in-fill development meeting the following conditions:

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies, as well as with applicable zoning designation and regulations.
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c) The project site has no value as habitat for endangered, rare, or threatened species.
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e) The site can be adequately served by all required utilities and public services.

It is preliminarily assumed that the proposed project meets Conditions A, B, C, and E; therefore, the CE Technical Evaluation Memo will provide brief narratives demonstrating the project's compliance with these conditions.

To demonstrate compliance with Condition D, the proposed approach includes preparation of the following technical studies: Air Quality, Noise, and Traffic. The findings of the technical studies will be presented in the CE Technical Evaluation Memo, including narratives to substantiate that the project would not result in any significant effects. Also, to demonstrate compliance with Condition D, the CE Technical Evaluation Memo will provide a brief narrative demonstrating that the project would not result in a significant effect concerning water quality, based on the *City of Costa Mesa General Plan* and *Costa Mesa Municipal Code Section 8-32, Control of urban runoff*.

CEQA Guidelines Section 15300.2, *Exceptions*, details exceptions to the use of categorical exemptions based on the following factors.

- a) Location: This exception pertains to Classes 3, 4, 5, 6, and 11, and not Class 32. Further, the project site is not located in a particularly sensitive environment. Therefore, this exception would not apply.
- b) Cumulative Impact: The project would result in less than significant or no environmental impacts. Additionally, it is assumed that no project of the same type and in the same vicinity, capable of interacting with the proposed project, would be developed. Thus, significant cumulative impacts are not anticipated and this exception would not apply.
- c) Significant Effect: There are no known unusual circumstances concerning the project. Thus, there is no known reasonable possibility that the project would have a significant effect on the environment. As such, this exception would not apply.
- d) Scenic Highways: The project site is not located within a State scenic highway. Moreover, the project would not damage scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources. Therefore, this exception would not apply.
- e) Hazardous Waste Sites: As part of our preliminary research, we have discovered that the project site is on the Cortese list. The Cortese list qualifies as a list of hazardous materials sites under Section 65962.5 of the California Government Code. Although the site's status is documented as "closed" since 2010, it is still on the Cortese list and technically would not qualify for a categorical exemption based on this exception. The reason being is that the environmental document would need to verify that the proposed project does not involve anything not considered during the time of case closure (change of exposure/risk to persons or the environment, change in regulatory requirements, etc.), that could require re-opening the case with the applicable agency. To be conservative, it is our recommendation that City staff consult with the City Attorney for feedback on the CEQA approach moving forward.
- f) Historical Resources: It is assumed that the existing buildings are not historical resource(s) and thus, this exception would not apply.

It is noted, should the City deem it necessary to provide technical studies to further demonstrate that the project would not result in any significant effects concerning cultural resources and/or water quality, a separate scope and fee for preparation of technical studies by Michael Baker's in-house experts can be provided.

Our proposed scope of work to prepare a CE Technical Evaluation Memo for the project consists of the following tasks:

**TASK 1.0 PROJECT KICK-OFF AND PROJECT CHARACTERISTICS**

The project work program will be initiated with a Kick-Off Meeting conducted via conference call with City staff to discuss the project in greater detail. This initial discussion will confirm the City's expectations and project goals as well as develop/refine the project description. This discussion will also establish the analysis' parameters, details of the proposed construction activities and buildout conditions, project schedule, and overall communications protocol. Prior to the Kick-Off Meeting, Michael Baker will

distribute an agenda and data needs list. This scope of work assumes that the City/Applicant will provide all data needs as well as a detailed project description and/or project plans at the Kick-Off Meeting.

Additionally, as stated above, based on CEQA Guidelines Section 15300.2(e), the project may be excluded from a categorical exemption due to the fact that the site, although closed, is listed on the Cortese list. As part of the Kick-Off Meeting, Michael Baker will discuss with City staff to determine whether this factor disqualifies the project from a categorical exemption and discuss potential alternative options for CEQA compliance, which may involve preparation of an Initial Study/Negative (or Mitigated Negative) Declaration.

## **TASK 2.0 TECHNICAL ANALYSES**

### **2.1 AIR QUALITY MEMORANDUM**

Michael Baker's in-house specialists will prepare an Air Quality Memorandum, to be appended to the CE Technical Evaluation Memo. This scope of work includes the following tasks.

*Construction-Related Emissions.* Based on data provided by the Applicant, emissions generated during earthwork, paving, and building activities will be quantified using the California Emissions Estimator Model (CalEEMod), version 2016.3.2. A general description of the major phases of construction and their timing will be required from the Applicant. The air pollutant emissions during construction will be compared to the South Coast Air Quality Management District's (SCAQMD) Regional Thresholds of Significance. Naturally occurring asbestos impacts will also be qualitatively discussed.

*Long-Term Emissions.* Operational (i.e., area, mobile, and energy source) emissions will be quantified and compared to the SCAQMD regional thresholds of significance. The emissions will be quantitatively derived utilizing CalEEMod. Emission reductions due to project design features will be incorporated into the operational emissions inventory. Primary sources of emissions will be related to area sources and local/regional vehicle miles traveled. Project consistency with the SCAQMD's 2016 Air Quality Management Plan will also be addressed.

*Localized Emissions.* The project is located within the SCAQMD's Source Receptor Area 18 (North Orange County Coastal). Based on localized meteorological data for SRA 18, Localized impacts will be analyzed based upon the SCAQMD's Localized Significance Thresholds methodology.

*Air Emissions Health Impacts.* As a result of the California Supreme Court decision for *Sierra Club vs. County of Fresno* (Friant Ranch L.P.), the resultant human health impacts from the project's short-term construction and long-term operational air emissions will be qualitatively analyzed.

### **2.2 NOISE**

Michael Baker's in-house specialists will prepare a Noise Memorandum, to be appended to the CE Technical Evaluation Memo. This scope of work includes the following tasks.

*Existing Conditions/Regulatory Framework.* 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. Michael Baker will conduct a site visit throughout the project

site. During the site visit, Michael Baker will conduct short-term noise level measurements along the project area. The noise monitoring survey will be conducted at up to three separate locations to establish baseline noise levels in the project area. The noise analysis will be structured to address the applicable questions from Appendix G of the CEQA Guidelines.

Construction-Related Noise and Vibration. Construction would occur during implementation of the proposed project. 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. The construction noise impacts will be evaluated in terms of maximum levels ( $L_{max}$ ) and hourly equivalent continuous noise levels ( $L_{eq}$ ) and the frequency of occurrence at adjacent sensitive locations.

Operational Noise Sources. Off-site noise impacts from vehicular traffic and on-site noise generating activities will be addressed and analyzed for potential impacts to adjacent uses.

### **2.3 TRIP GENERATION/VMT ASSESSMENT MEMORANDUM**

Based on information provided by the City, it is assumed that the Applicant will provide trip generation information as approved by the City's Transportation Division for use in the CE Technical Evaluation Memo. The City's Transportation Division has also categorized the proposed land use (i.e., autobody repair facility) as a "very low" trip generator based on its operational characteristics. Utilizing this information and the Office of Planning and Research's *Technical Advisory on Evaluating Transportation Impacts in CEQA*, Michael Baker assumes the proposed project would be screened out of additional vehicle miles traveled (VMT) analysis and would result in less than significant impacts in regard to transportation. The analysis will summarize the Applicant-provided trip generation information and City's VMT screening determination.

#### **TASK 3.0 CE TECHNICAL EVALUATION MEMO**

The CE Technical Evaluation Memo will include the necessary analyses to evaluate whether the project would result in any potentially significant effects on the environment or whether it meets the Class 32 conditions to be categorically exempt. Michael Baker will identify the project's short-term construction and long-term operational impacts and their levels of significance to evaluate the project's potential to meet the required conditions for a Class 32 CE, pursuant to CEQA Guidelines Section 15332, *In-Fill Development Projects*. The CE Technical Evaluation Memo will provide a brief narrative demonstrating the project's compliance with conditions concerning land use; site location, size, and setting; habitat value; and utilities and public services.

This analysis will also include an evaluation of the project's compliance with Condition D, substantiating whether the project would result in any significant effects concerning air quality, noise, traffic, and water quality. The technical analyses detailed in Task 2.0 will be briefly summarized and included as Appendices to the CE Technical Evaluation Memo. Water quality will also be addressed based on the *City of Costa Mesa General Plan* and *Costa Mesa Municipal Code Section 8-32, Control of urban runoff*, requirements. Should specific hydrology/water quality data be required for this analysis, this scope of work assumes that this information will be provided by the Applicant. Further, the analysis will include a brief narrative evaluating whether the project meets any of the conditions outlined in CEQA Guidelines Section 15300.2,

*Exceptions.* The CE Technical Evaluation Memo will conclude with a determination as to whether a Class 32 CE is the appropriate CEQA approach for the proposed project.

**TASK 4.0 PROJECT MANAGEMENT**

Ms. Kristen Bogue will be responsible for implementation of overall management and supervision of the Project Team, and ongoing consultation with City staff and the Applicant. Ms. Bogue will also undertake consultation and coordination of the project and review the technical studies for accuracy. Ms. Bogue will coordinate with all technical staff toward the timely completion of the CE Technical Evaluation Memo. Ms. Bogue will attend two conference call meetings (the Kick-Off Meeting [Task 1.0] and one additional project status conference call). This scope of work excludes in-person meetings and hearing attendance. Should the City determine that additional meetings, beyond this scope of work, are necessary, services will be provided under a separate scope of work on a time and materials basis.

**TASK 5.0 DELIVERABLES**

Deliverables for the CE Technical Evaluation Memo

- 1 electronic copy of the Draft CE Technical Evaluation Memo & Appendices;
- 1 electronic copy of the Final CE Technical Evaluation Memo & Appendices; and
- 2 Hardcopies of the Final CE Technical Evaluation Memo.

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

## **SCHEDULE**

The Michael Baker project team is committed to meeting a reasonable schedule desired by the City. This schedule assumes that all data needs and a detailed project description/plans are provided at the Kick-Off Meeting. During the Kick-Off 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
Preparation of Technical Memorandums	Weeks 1 - 3
Michael Baker Prepares Draft CE Technical Evaluation Memo	Week 4
City Reviews Draft CE Technical Evaluation Memo	Week 5
Michael Baker Prepares Final CE Technical Evaluation Memo	Week 6

**FEE**

Our proposed fee to prepare a CE Technical Evaluation Memo for the proposed project is presented in the following table.

2750 BRISTOL STREET						FEE PROPOSAL	
CATEGORICAL EXEMPTION TECHNICAL EVALUATION MEMO						29-Jun-2020	
TASK	ET	KB	ZC	EA	Total Hours	Total Fees	
	\$280	\$195	\$140	\$120			
<b>1.0 PROJECT KICK-OFF &amp; CHARACTERISTICS</b>	1	2		4	7	\$1,150	
<i>Subtotal Task 1.0</i>	1	2	0	4	7	\$1,150	
<b>2.0 TECHNICAL ANALYSES</b>							
2.1 Air Quality Memo	2	1	31		34	\$5,095	
2.2 Noise Memo	2	1	41		44	\$6,495	
2.3 Trip Generation/VMT Memo		2			2	\$390	
<i>Subtotal Task 2.0</i>	4	4	72	0	80	\$11,980	
<b>3.0 CE TECHNICAL EVALUATION MEMO</b>	2	6		20	28	\$4,130	
<i>Subtotal Task 3.0</i>	2	6	0	20	28	\$4,130	
<b>4.0 PROJECT MANAGEMENT</b>							
4.1 Project Management		8			8	\$1,560	
4.2 Conference Calls	1	2			3	\$670	
<i>Subtotal Task 4.0</i>	1	10	0	0	11	\$2,230	
<i>Total Hours</i>	8	22	72	24	126		
<i>Percent Total Hours</i>	6%	17%	57%	19%	100%		
<i>Total Labor Fees</i>	\$2,240	\$4,290	\$10,080	\$2,880		\$19,490	
<b>5.0 DELIVERABLES</b>						\$500	
<b>TOTAL FEES</b>						\$19,990	
	ET = Eddie Torres		ZC = Zhe Chen				
	KB = Kristen Bogue		EA = Env. Analyst				

## **ASSUMPTIONS**

Michael Baker makes no assumptions regarding the appropriate CEQA document for the project. Should the environmental analysis reveal that an Initial Study/Mitigated Negative Declaration 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 screencheck 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 and other requested data needs will be provided at the Kick-Off Meeting and 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. Michael Baker is 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](mailto:egtorres@mbakerintl.com).

Sincerely,



Eddie Torres  
Associate Vice President  
Environmental Services



**EXHIBIT C**

**CITY COUNCIL POLICY 100-5**

**CITY OF COSTA MESA, CALIFORNIA**

**COUNCIL POLICY**

<b>SUBJECT</b>	<b>POLICY NUMBER</b>	<b>EFFECTIVE DATE</b>	<b>PAGE</b>
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.