

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
LG2WB ENGINEERS, INC. DBA LINSKOTT, LAW & GREENSPAN, ENGINEERS**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 2nd day of May, 2022 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and LG2WB ENGINEERS, INC., a California corporation DBA LINSKOTT, LAW & GREENSPAN, ENGINEERS ("Consultant").

WITNESSETH:

A. City proposes to utilize the services of Consultant as an independent contractor to provide traffic engineering design services in connection with a new Pedestrian Hybrid Beacon (HAWK) signal for Wilson Street Park, as more fully described herein; and

B. The project location is depicted in Exhibit "A," attached hereto and incorporated herein; and

C. 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

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

E. 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 "B" and incorporated herein. Consultant shall perform Task 8 upon request by City.

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 is familiar with all applicable 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. Compliance with Applicable Laws. Consultant 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 employees, agents, or subconsultants, if any, 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 "C," attached hereto and incorporated herein (the "Fee Schedule"). Consultant's total compensation for Tasks 1 through 7 shall not exceed Eighteen Thousand Two Hundred Fifty Dollars (\$18,250.00). Consultant's total compensation for Task 8 shall not exceed Six Thousand Dollars (\$6,000.00).

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 upon 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, material shortages, compliance with laws or regulations, riots, acts of war, pandemics, or any other conditions beyond the reasonable control of a party (each, a "Force Majeure Event"). If a party experiences a Force Majeure Event, the party shall, within five (5) days of the occurrence of the Force Majeure Event, give written notice to the other party stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect. Any suspension of performance shall be of no greater scope and of no longer duration than is reasonably required and the party experiencing the Force Majeure Event shall use best efforts without being obligated to incur any material expenditure to remedy its inability to perform; provided, however, if the suspension of performance continues for sixty (60) days after the date of the occurrence and such failure to perform would constitute a material breach of this Agreement in the absence of such Force

Majeure Event, the parties shall meet and discuss in good faith any amendments to this Agreement to permit the other party to exercise its rights under this Agreement. If the parties are not able to agree on such amendments within thirty (30) days and if suspension of performance continues, such other party may terminate this Agreement immediately by written notice to the party experiencing the Force Majeure Event, in which case neither party shall have any liability to the other except for those rights and liabilities that accrued prior to the date of termination.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of two (2) years, ending on May 1, 2024, 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 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, and employees 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 be cancelled 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, and employees. 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, and employees.

- (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:

Linscott, Law & Greenspan, Engineers
2 Executive Circle, Suite 250
Irvine, CA 92614
Tel: (949) 825-6175
Attn: Dave Roseman

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5180
Attn: Jennifer Rosales

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 "D" 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 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.

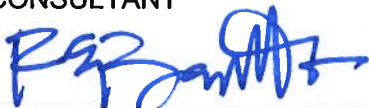
6.26. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other 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.

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.

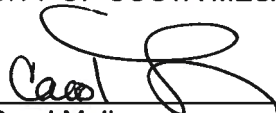
CONSULTANT



Richard E. Barretto
Principal

Date: 5.2.2022

CITY OF COSTA MESA



Carol Molina
Purchasing Officer

Date: May 6, 2022

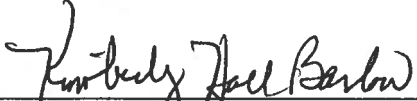
ATTEST:

Brenda Green 5/19/2022

Brenda Green
City Clerk




APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

Date: 5/17/22


APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 5/10/22

APPROVED AS TO CONTENT:



Jennifer Rosales
Project Manager

Date: 5/11/22

DEPARTMENTAL APPROVAL:

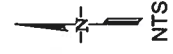
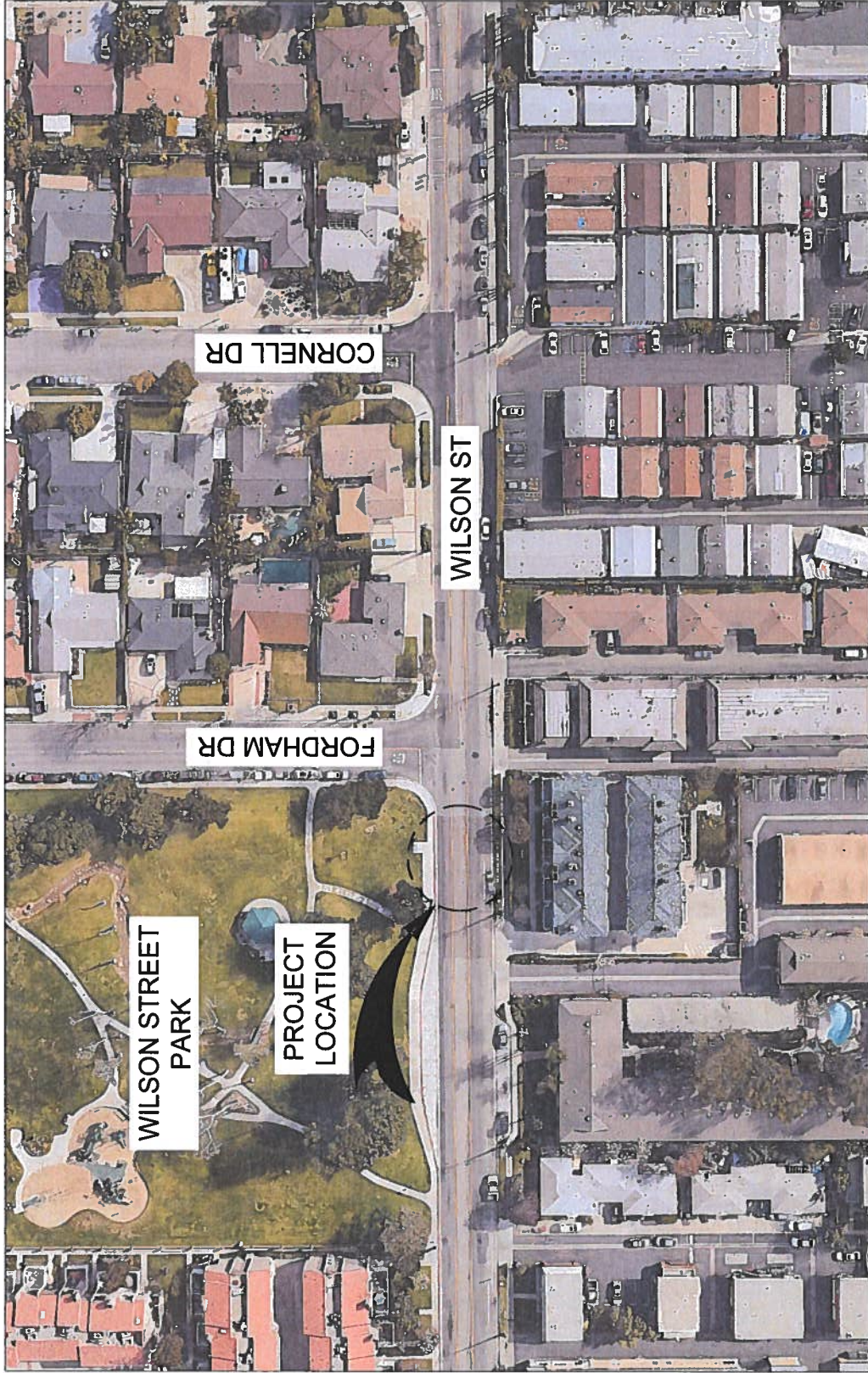


Raja Sethuraman
Public Services Director

Date: 5-11-22

EXHIBIT A
PROJECT LOCATION

EXHIBIT A



WILSON STREET PEDESTRIAN HYBRID BEACON (HAWK) PROPOSED HAWK SIGNAL

EXHIBIT B
CONSULTANT'S PROPOSAL

April 27, 2022

Mr. Ramin Nikoui, PE, MS
Associate Engineer
Transportation Services Division
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

LLG Reference: P2.22.0058.1

**Subject: Proposal to Provide Traffic Engineering Design Services for the Pedestrian Hybrid Beacon (HAWK) for Wilson Street Park
Costa Mesa, California**

Dear Mr. Nikoui:

As requested, Linscott, Law & Greenspan, Engineers (LLG) is pleased to submit this proposal to provide traffic engineering design services related to traffic improvements associated with the Pedestrian Hybrid Beacon (HAWK) Signal. Based on our review of the request for proposal, we understand that the project will entail the preparation of Plans, Specifications, and Estimates (PS&E) for signing and striping and traffic signal improvements.

Pursuant to our coordination efforts we understand that the city has recently prepared a complete street safety assessment and one of the recommend improvements identified in the report is the installation of the HAWK signal to facilitate a safe and orderly crossing for pedestrians to and from the Wilson Park. A warrant analysis was also conducted and supports the installation of the HAWK at the intersection of Wilson Street and Fordham Drive.

As such, this proposal summarizes the work tasks associated with the preparation of a traffic signal plan inclusive of signing and striping installation. In total, LLG will prepare plans, specifications, and estimates (PS&E) for the traffic-related design plan and a signal timing plan.

The design plans will be prepared according to City of Costa Mesa requirements and will be consistent with the State of California Department of Transportation *Standard Plans and Specifications* and the current *California Manual on Uniform Traffic Control Devices (MUTCD)*.

PROJECT SCOPE AND ASSUMPTIONS

This Proposal assumes the following:

- BKF Engineers, City of Costa Mesa consultant, is preparing the off-site improvement for the bulb-out, curb ramps and chocker and will make these files readily available to LLG.
- The City will provide information available to LLG. This includes all pertinent on-site and off-site improvement plans, to-scale drawings and existing aerial photographs, as-built plans, utility information and/or topographic maps, if available.
- Any changes or revisions in project access locations, project scope, or design schemes, once our design effort has begun will be considered to be outside the current Scope of Work and will require an addition to the Design Fee maximum.
- The project is located within the limits of the City of Costa Mesa. The City of Costa Mesa will be the reviewing and approving agencies.
- The plans, specifications, and probable construction cost estimates will be prepared using Imperial units of measurement.

SCOPE OF WORK

Task 1: Project Mobilization and Topography Survey

- 1.1 Review existing and proposed improvement plans for the project roadway segments and intersections to ensure they are consistent with those required by the City of Costa Mesa and the project's scope. Coordinate with the City and obtain AutoCAD drawing files for existing and proposed street improvements. BKF Engineering will provide LLG with the proposed street improvement design inclusive of the bulb-out, chocker, and intersection topo in CAD format.
- 1.2 Search for and collect as-built plans from the City of Costa Mesa, Visit the project site, photograph, measure and verify all pertinent surface conditions.
- 1.3 Coordinate with the City of Costa Mesa for pertinent design standards, to include existing signing and striping plans for Wilson Street. The traffic plans will be prepared in accordance with City of Costa Mesa requirements, the current California Department of Transportation *Standard Plans and Specifications* and the current California *MUTCD*.

- 1.4 Perform a field topographic survey thru the project area to establish enough horizontal controls for the design and construction of new Traffic Signal Standards and Foundations. Establish existing and proposed controls including centerline, street geometrics, and right-of-way throughout project limits. Verify existing curb and gutter alignment, signing and striping layout and confirm existing utilities above and below ground, and consider pedestrian accessibility for use in preparation of the traffic signal plan.
- 1.5 Establish City right-of-way boundaries with the same general care as would be applied to establish the exterior boundary on a final subdivision map.
- 1.6 Within the established project limits, the base CAD file will include but not limited to; existing BCR, ECR, centerlines, angle points, top of curb, back of sidewalk, driveways (X & Y), pavement marking & striping, all utilities, structures, walls, trees and landscape, hydrants, catch basins, traffic (or non-traffic) signs, and manholes.

Task 2: Traffic Signal Plan (HAWK)

- 2.1 Prepare traffic signal installation plan for the following intersection:

- Wilson Street at Fordham Drive

The traffic signal plans will be prepared at 20 scale (1"=20') using AutoCAD drafting software on a 24" x 36" City of Costa Mesa Title Block Mylars. The traffic signal plans will incorporate all aspects of the traffic signal, including new signal standards, signal heads, loop detectors, conduits, Opticom devices, battery backup system, signal interconnect, controller assembly/service point locations, and proposed signing and striping modifications. We will show all related street/intersection improvements on our plan. Our traffic signal design package will contain one (1) plan sheet.

- 2.2 Upon approval of the traffic signal plan, coordinate with Southern California Edison on design of service feed point. Coordinate with local utility company to address any conflicts found should relocation of said utility be required.

Task 3: Project Special Provisions and Cost Estimates

- 3.1 Prepare technical Special Provisions for the project according to City of Costa Mesa. LLG is assuming that sample contract documents will be obtained from the City of Costa Mesa, to which appropriate modifications will be made. It should be noted that the anticipated modifications are assumed to be minor and will not require extensive re-writing of the provided contract documents.

- 3.2 Prepare an opinion of probable cost for signal work for bidding and bonding purposes.

Task 4: Plan Processing

- 4.1 Submit a reproducible set of plans at the 60% preparation level to the City of Costa Mesa for first (1st) plan check review
- 4.2 Revise plans, Special Provisions, and cost estimate per City's comments and submit second (2nd) and third (3rd) plan set of reproducible prints at the 90% and 100% preparation level to the City of Costa Mesa for final check and approval.
- 4.3 After plans are approved, we will submit one set of Mylar plans to the City of Costa Mesa for signatures/approvals.

Task 5: Meeting Support

- 5.1 In support of project processing and as part of project coordination, LLG will prepare for and attend up to two (2) coordination meetings via web conferencing with the Project team and City staff and one (1) field walk through with City staff.

Task 6: Construction Related Support

- 6.1 Provide "as-needed" construction-related support services and coordinate with the contractors to review specifications and address traffic-related issues during the implementation of signing and striping improvements and traffic signal installation.
- 6.2 Respond to "Request for Information" submittals from contractors on an as-needed basis.
- 6.3 Conduct a review of the "Traffic Signal Equipment Submittals" for proposed improvements and confirm consistency with the approved traffic signal plans for the subject intersections.
- 6.4 Prepare summary memorandum documenting review and coordinate with the City of Costa Mesa staff for approval.

Task 7: "As-Built/Record Drawing" Traffic Plans

- 7.1 Obtain copy of "mylar" plans for the approved traffic improvement plans.
- 7.2 Conduct a field survey of existing intersections conditions along the project roadway and intersection and verify all aspects of the traffic signal, including existing signal standards, signal heads, loop detectors, conduits, Opticom

devices, battery backup system, signal interconnect, controller assembly/service point locations, and existing intersections signing and striping conditions.

- 7.3 Based on the results of Task 7.2 above, prepare “As-Built/Record Drawing” plans to the previously approved traffic plans to accurately reflect “above-ground” existing conditions.

The plans will be prepared at 20 scale (1”=20’) using AutoCAD drafting software on a 24” x 36” City of Costa Mesa Title Block Mylars. Our package will contain one (1) plan sheet.

Plans will be submitted to the City for review and approval.

Optional Tasks

Task 8: Potholing

- 8.1 Coordinate for surveying and potholing where required to determine underground utility conflicts prior to the 100% design submittal. Potholing will be conducted to full footing diameter and a depth of 6 feet.
- 8.2 Coordinate with underground alerts for markings of utility prior to potholing.
- 8.3 Attend field meeting with surveyor and staff to stake locations prior to potholing.

ADDITIONAL SERVICES

This Scope of Work does not include:

- The preparation of a signal warrant analysis and signal operations analysis.
- The preparation of easement plans (legal descriptions) or processing.
- Street Lighting Plans
- Traffic Control Plans
- Inspection services of any kind.
- Traffic signal operations analysis
- Traffic Signal Interconnect Plans
- Accident Assessment/Safety Evaluation

Most of the above services can be provided via an amendment to the proposed fee.

SCHEDULING

We estimate that design plans can be completed and submitted for review three weeks after we receive written authorization to proceed. This time estimate assumes that issues of direct impact are well enough defined to allow our design process to proceed effectively. To the extent possible, our work will be completed in coordination with your schedule.

LIABILITY

We carry appropriate liability insurance, both general and professional and workman's compensation insurance. Should this proposal be accepted, the Client (represented by the signature below) agrees to limit Linscott, Law & Greenspan, Engineers' liability to the Client and to all Contractors and Subcontractors on the project due to Linscott, Law & Greenspan, Engineers' negligent acts, errors, or omissions, such that the total aggregate liability of Linscott, Law & Greenspan, Engineers, to all those named shall not exceed \$50,000.00 or Linscott, Law & Greenspan, Engineers' total fee for the services rendered on this project, whichever is greater.

AUTHORIZATION

If this proposal is acceptable, you may indicate approval by signing in the space provided at the end of this letter and returning the original for our files. Alternatively, you may issue a purchase order or consultant agreement with this proposal attached as an exhibit. A copy of this proposal is enclosed for your convenience. This proposal is valid for 90 days from the date of this letter.

Please note that for the purposes of preparing contract paperwork, Linscott, Law & Greenspan, Engineers, is a DBA for LG2WB Engineers, Inc., a California corporation.

TERMINATION

The services covered by this proposal may be terminated by either party at any time by written notice. Upon termination, Linscott, Law & Greenspan, Engineers will stop all activities immediately, notify all subcontractors (if any) to stop work, and prepare an invoice for any services rendered but not already submitted to the client.

Mr. Ramin Nikoui
April 27, 2022
Page 7



We appreciate the opportunity to submit this proposal and look forward to working with you on this project. Please call us at (949) 825-6175 if you have any questions or comments regarding this proposal.

Sincerely,
Linscott, Law & Greenspan, Engineers

A handwritten signature in black ink, appearing to read "Kim H. Preap", is positioned above the typed name.

Kim H. Preap
Senior Transportation Engineer
California Registration: TR2833

cc: Richard E. Barretto, P.E., Principal, LLG

EXHIBIT C
FEE SCHEDULE



Engineers & Planners
Traffic
Transportation
Parking

Linscott, Law & Greenspan, Engineers
2 Executive Circle
Suite 250
Irvine, CA 92614
949.825.6175
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www.llgengineers.com

Pasadena
Irvine
San Diego
Woodland Hills

March 7, 2022

Mr. Ramin Nikoui, PE, MS
Associate Engineer
Transportation Services Division
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

LLG Reference: P2.22.0058.1

Subject: **Cost Proposal to Provide Traffic Engineering Design Services for the Pedestrian Hybrid Beacon (HAWK) for Wilson Street Park**
Costa Mesa, California

FEE ESTIMATE

Our professional fees for the services outlined above in Tasks 1 through 7 will be billed monthly, on a percent complete basis, using the attached Fee Schedule, for a fixed fee not to exceed **\$18,250.00**.

Required Traffic Design Plan Budget Estimate:

▪ Topography, Utility Research and Base Preparation	\$ 4,000.00
▪ Traffic Signal Plan (1 sheet)	\$ 9,000.00
▪ Special Provisions & Costs Estimates	\$ 500.00
▪ Coordination Meetings (3)	\$ 750.00
▪ Construction Support	\$ 3,000.00
▪ As-Built/Record Drawings	\$ 500.00
▪ Reimbursable Expenses	\$ <u>500.00</u>
Total Contract Request – Task 1 to Task 7:	\$ 18,250.00

Optional Task Budget Reservation:

▪ Potholing	\$ 6,000.00
Optional Services – Task 8:	\$ 6,000.00

For Optional Task 8, as outlined above, we would request a budget authorization of an additional **\$6,000.00** if these services would be required by the City.

EXHIBIT D

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.