

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
TS WORLDWIDE, LLC**

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 23rd day of April, 2024 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and TS WORLDWIDE, LLC, a California limited liability company acting through its HVS Los Angeles division ("Consultant").

RECITALS

A. City proposes to utilize the services of Consultant as an independent contractor to perform and provide a market demand and hotel feasibility study, as more fully described herein; and

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

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

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

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

1.0. SERVICES PROVIDED BY CONSULTANT

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

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

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

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;

- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

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

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

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

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

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

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Consultant's Proposal, attached hereto and made a part of this Agreement. Consultant's total compensation shall not exceed Fifteen-Thousand Dollars (\$15,000.00).

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

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

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and end on April 22, 2025, unless previously terminated as provided herein or as otherwise agreed to in writing by the

parties. This Agreement may be extended by two [2] additional one [1] year periods upon mutual written agreement of both parties.

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

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

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

5.0. INSURANCE

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

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for

the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

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

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

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

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

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

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

6.0. GENERAL PROVISIONS

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

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

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

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

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

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

IF TO CONSULTANT:

TS Worldwide, LLC, acting through
its HVS Los Angeles division
140 South Lake Avenue, Suite 300
Pasadena, CA 91101
Tel: (310) 270-3240
Attn: Luigi Major

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5023
Attn: Daniel Inloes

Courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

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

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

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

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

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

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur

any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11 Conflicts with Independent Contractor. Contractor/consultant's duties and services under this Agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering into this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor/consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor/consultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this Agreement.

6.12. 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.

6.13. 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.

6.14. 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.

6.15. 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.

6.16. 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.

6.17. 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.

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

6.19. 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.

6.20. 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.

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

6.22. 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.

6.23. 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.

6.24. 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.

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

6.26. 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.

6.27. 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.

6.28. 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.

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

[Signatures appear on following page.]

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

CONSULTANT

[Signature]
Signature

Date: 4/25/2024

Luigi Major - Managing Director
[Name and Title]

CITY OF COSTA MESA

[Signature]
Carol Molina
Finance Director

Date: 5/2/2024

ATTEST:

[Signature]
for Brenda Green
City Clerk



APPROVED AS TO FORM:

[Signature]
Kimberly Hall Barlow
City Attorney

Date: 5/3/2024

APPROVED AS TO INSURANCE:

[Signature]
Ruth Wang
Risk Management

Date: 5/4/24

APPROVED AS TO CONTENT:



Daniel Inloes
Project Manager

Date: 5/2/2024

DEPARTMENTAL APPROVAL:



Scott Drapkin
Assistant Economic and Development Services Director

Date: 5-2-24

EXHIBIT A
CONSULTANT'S PROPOSAL



April 18, 2024

Mr. Daniel Inloes
Economic Development Administrator
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
(714) 754-5088
daniel.inloes@costamesaca.gov

HVS LOS ANGELES
140 South Lake Ave
Suite 300
Pasadena, California, 91101
+1 (405) 612-6255 (Work)

Re: Hotel Demand & Feasibility Study
Costa Mesa, California

www.hvs.com

Dear Mr. Inloes:

Thank you for your recent call pertaining to your Costa Mesa, California project; we are pleased to submit this proposal for our services. We are certain that we will be able to provide you with the precise mix of experience and skills you will need for this engagement. HVS is internationally recognized as the leader in hospitality consulting, providing the highest quality experience in this arena. HVS is unique among hospitality consulting firms and offers the City of Costa Mesa unparalleled credibility, specialized experience, and a track record of success.

The attached proposal sets forth a description of the objectives and scope of the assignment, along with a detailed description of the methodology to be employed, an estimate of the time requirements, and a schedule of professional fees. The proposal also includes a list of requested information that we would require for completing the study.

If the proposal meets your acceptance, please sign and return a copy with your retainer payment. If you have any questions regarding the contents of the proposal, please do not hesitate to contact me. Thank you for the opportunity to submit this proposal for your project.

Very truly yours,
HVS division of TS Worldwide LLC

A handwritten signature in black ink, appearing to read 'Luigi Major'.

Luigi Major, MAI
Managing Director
lmajor@hvs.com
+1 (310) 270-3240 (Work)



PROPOSAL FOR A HOTEL DEMAND AND FEASIBILITY
STUDY

Costa Mesa, California

SUBMITTED TO:

DANIEL INLOES
Economic Development Administrator
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
(714) 754-5088
daniel.inloes@costamesaca.gov

PREPARED BY:

HVS LOS ANGELES
HVS division of TS Worldwide LLC
140 South Lake Ave, Suite 300
Pasadena, California, 91101
+1 (405) 612-6255 (Work)

April 4, 2024



Proposal for a Hotel Demand & Feasibility Study

Pursuant to our conversation, we are pleased to submit this proposal for services of HVS division of TS Worldwide LLC in connection with the hotel demand study in Costa Mesa, California. This letter sets forth a description of the objectives and scope of the assignment, along with the methodology to be employed, an estimate of the time requirements, and a schedule of professional fees.

Intended Use and User of the Engagement

The demand and feasibility study is being prepared for the use of City of Costa Mesa in connection with internal business decisions related to the development of additional hotels in the city. We are acting as consultants to test the feasibility of additional supply entering the market.

History of HVS

HVS was created in 1980 to satisfy the growing demand for reliable and well-documented hotel and motel valuations, market studies and feasibility reports. Since this time we have gained the respect of banking, investment, real estate and hotel industry professionals by providing the highest quality hotel appraisal and counseling services in the country.

Over the past four decades, HVS has expanded both our range of services and our geographical boundaries. Our firm-wide range of services has expanded into six divisions consisting of Consulting and Valuation, Executive Search, Brokerage & Advisory, Asset Management, Convention, Sports, and Entertainment Facilities Consulting, and Interior Design.

Hospitality Experience

With a staff of over 300 industry professionals, HVS has consulted for more than 20,000 hotels and resorts in all 50 states and more than 55 countries worldwide. We routinely evaluate more than 2,000 hotels each year. Our staff continuously monitors every major hotel market and is up-to-date with the latest economic trends. This experience and our database of information enable our firm to provide you with highly documented studies containing well-supported conclusions and detailed recommendations.

HVS associates specialize exclusively in hospitality-related consulting. All possess a unique combination of actual industry operating experience and real estate valuation cross training.



Objective

The objective of this assignment is to perform a market demand and hotel feasibility study for the purpose of evaluating the market demand, determining the capacity for the market to absorb additional hotel supply, and illustrating the feasibility of the new hotel supply under two scenarios (limited-service and select-service).

Once determined the amount of new supply that the market can absorb within the next five years, we will make recommendations as to the type of hotel(s) that is most feasible for development. For purposes of this assignment, we will be analyzing two product types and scenarios (limited-service and select-service hotels). The client has the option to expand the study to include a third scenario (full-service hotels) at an additional fee, described further below in this proposal.

Under each hotel scenario, we will include a forecast of occupancy and rate (for the market and subject property), a 10-year projection of income and expense for each hotel, and an analysis on the return that an investor could expect to receive on the development cost of each hotel. Our study will also include a recommendation of the size, quality and type of lodging facility, and an optimal brand chain scale for the hotels.

We will also include an analysis of the potential additional TOT that can be received by the city based on the planned room nights and additional room nights that the city could absorb.

Phase I: Fieldwork

To accomplish the objective described above, our work will be conducted in three phases, beginning with fieldwork, which typically includes the following steps:

- a) The physical orientation of available sites will be studied with respect to access and visibility to highways and other forms of transportation. The local demand for accommodations will be analyzed. We will also review the supportive nature of surrounding land uses as they relate to the subject site(s).
- b) The demand for hotel accommodations will be investigated to identify the various generators of visitation operating within the local market. The current and anticipated potential of each of these market segments will be evaluated to determine the extent of existing and future demand. Interviews with officials of business and government, as well as statistical data collected during the fieldwork, are useful in locating and quantifying transient demand. In conjunction with the identification of potential demand, an investigation will be made of the respective strengths of these markets in terms of seasonality, weekly demand fluctuations, vulnerability



to economic trends and changes in travel patterns, and other related factors. Similar market-research procedures are utilized in estimating the demand for food and beverage (F&B) outlets, meeting space, and other facilities.

- c) The market orientation of nearby lodging facilities will be evaluated to determine their competitive position with respect to the subject site(s). Those properties displaying similar market attributes will receive a physical inspection, along with selective management interviews, to estimate levels of occupancy, room rates, market segmentation, and other pertinent operational characteristics. Some of the competitive factors that will be specifically reviewed include location, type and quality of facilities, physical condition, management expertise, and chain affiliation.
- d) Statistical data relating to general economic and demographic trends often foreshadow future potential for market areas and neighborhoods. Interviews with local Chambers of Commerce, economic development agencies, and other related organizations, along with an investigation of the proposed subject property's primary market area, will reveal patterns reflecting growth, stability, or decline.
- e) Through interviews with hotel operators, developers, governmental officials, and others, we will ascertain the status of projects under construction, proposed, or rumored that might be competitive with the proposed subject hotel.

**Phase II:
Analysis**

The analysis phase will utilize data and information gathered during the fieldwork phase, along with our extensive library of actual hotel operating statements, financial statistics, area hotel trends, and investor requirements.

We will first compose recommendations for the proposed hotel's facilities and brand chain-scale, which will be based on the demands of the local and pertinent regional market and will address the following points:

- Room count and room type mix (suites vs. standard rooms)
- F&B facilities
- Meeting/function space
- Recreational amenities
- Brand chain scale

Based on the above-noted recommendations for each scenario (limited-service and select-service), we will then perform a supply-and-demand analysis for the competitive market, which typically includes the following steps:

- a) Using the occupancy levels and market segmentations of the competitive properties, the number of room nights accommodated in each segment is calculated by multiplying each property's room count by its occupancy, market segmentation, and 365 days, which yields the accommodated-room-night demand. The annual number of room nights occupied per room in each segment is also calculated (room nights occupied per year divided by the room count), and the resulting figure serves as a competitive index.
- b) Latent demand (unaccommodated and induced demand) is estimated for each market segment.
- c) Growth rates are projected for each of the market segments.
- d) The total usable room-night demand, which consists of usable latent demand and accommodated demand, is projected.
- e) The area's guestroom supply and total room nights available are quantified for each projection year.
- f) The overall competitive occupancy is calculated for each projection year.

The analysis phase will utilize data and information gathered during the fieldwork phase, along with our extensive library of actual hotel operating statements, financial statistics, area hotel trends, and investor requirements, in order to perform a supply-and-demand analysis for the competitive market. The supply-and-demand analysis typically encompasses the following steps:

1. Using the occupancy levels and market segmentations of the competitive properties, the number of room nights accommodated in each segment is calculated by multiplying each property's room count by its occupancy, market segmentation, and 365 days, which yields the accommodated-room-night demand. The annual number of room nights occupied per room in each segment is also calculated (room nights occupied per year divided by the room count), and the resulting figure serves as a competitive index.
2. Latent demand (unaccommodated and induced demand) is estimated for each market segment.
3. Growth rates are projected for each of the market segments.
4. The total usable room-night demand, which consists of usable latent demand and accommodated demand, is projected.
5. The area's guestroom supply and total room nights available are quantified for each projection year.
6. The overall competitive occupancy is calculated for each projection year.

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.

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;

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:

EXHIBIT B

CITY COUNCIL POLICY 100-5



Limitations of Liability

It is agreed that our company's liability, our employees, and anyone else associated with this assignment is limited to the amount of the fee paid as liquidated damages. You acknowledge that any opinions, recommendations, and conclusions expressed during this assignment will be rendered by the staff acting solely as employees and not as individuals. Our responsibility is limited to the client; use of our product by third parties shall be solely at the risk of the client and/or third parties. The study described in this proposal will be made subject to certain assumptions and limiting conditions. A copy of our normal assumptions and limiting conditions will be provided upon request.

Conclusion

If the foregoing proposal meets with your acceptance, please sign and return the signed engagement. Your signature beneath the words "Agreed to and Accepted" signifies your agreement to employ the HVS division of TS Worldwide LLC for these services. To schedule our assignments and perform your study in accordance with the timing set forth above, we ask that you return an executed copy of this agreement by **May 14, 2024**. We appreciate the opportunity of submitting this proposal and look forward to working with you on this assignment.

Very truly yours,
HVS division of TS Worldwide LLC

Luigi Major, MAI
Managing Director
lmajor@hvs.com
+1 (310) 270-3240 (Work)

AGREED TO AND ACCEPTED

Daniel Inloes
City of Costa Mesa

Signature: _____
Date: _____



It is our normal policy to provide an electronic draft copy of our final report for your review. After confirmation that our invoice for services has been paid in full, this draft will be provided in PDF and will include a watermark "DRAFT." Upon your approval of this draft, we will commence preparation of the final report. This fee includes one electronic copy of the final report, which will be delivered to you via email in PDF. Reports are not transmitted in Microsoft Word format.

In addition to our professional fees, you agree to reimburse us for reasonable out-of-pocket travel and related expenses not to exceed \$2,000 (inclusive of a \$750 charge for an STR Trend Report) incurred while traveling on your behalf. You will be billed periodically for these expenses, which will be due and payable upon presentation of our bills.

After completing the fieldwork phase of this assignment, should it become necessary to alter the parameters of the study, such as the property description, opening date, location, or any other factor that could change the final conclusions, the HVS division of TS Worldwide LLC will be entitled to charge an additional fee based on our current per-diem rates and the time required to incorporate the necessary changes into our analysis and report. In addition, the estimate of timing will be extended by an amount equal to the added work.

Payment Due Dates

If payment for professional fees and out-of-pocket travel and related expenses is not received within thirty (30) days of the billing date, HVS reserves the right to suspend all work until payment is made and apply a service charge of 1.5% per month, or fraction thereof, to the total unpaid sum. Should any type of action become necessary to enforce collection of bills rendered, it is further agreed that you (the client) or the prevailing party will be responsible for all collection costs, including but not limited to court costs and reasonable legal fees. It is understood that HVS may extend the time for payment on any part of billings rendered without affecting the understanding outlined above.

Collection of Outstanding Professional Fees

The parties to this contract agree that any disputes regarding professional fees and/or other charges owed to HVS will be resolved in accordance with Texas law (TS Worldwide is a Texas-based LLC with a home office location of 2601 Sagebrush Drive, Suite 101, Flower Mound, Texas, 75028). The parties to this contract further agree that (a) any legal action regarding money owed to HVS will take place in Texas; (b) Texas courts have exclusive jurisdiction for resolution of disputes; and (c) the plaintiff will have the choice of venue in any county in the State of Texas.



6. Facilities and brand chain-scale recommendation (limited and select service product)
7. Projection of occupancy and ADR (limited and select service product)
8. Income and expense projections (limited and select service product)
9. TOT estimates
10. ROI analysis (Limited and select service product)

When appropriate, we will include graphics such as photographs, maps, surveys, plans, and charts to assist in visualizing our findings.

Additional Services

Following the completion of this engagement, HVS can be engaged for additional development consulting services at the client's discretion, including the following:

- Design and Architecture
- Development Project Management
- Construction Management
- Franchise/Brand Search and Contract Negotiations
- Management/Operator Search and Contract Negotiations
- Hotel Management
- Asset Management

Timing

We anticipate that Phases I, II, and III of the feasibility study will be completed within approximately 35 days from the date we receive the signed proposal, retainer payment, and all requested information. At that time, we will provide you with a summary of findings; for this conference, we will provide you with various charts and data tables that support our findings.

Professional Fees

Our fee for Phases I, II, and III will be \$15,000, payable upon completion of our draft narrative report.

Optional: Our analysis and study as described above includes two analyses for a limited-service hotel product type as well as select-service product type. The full-service hotel scenario has been excluded given that elevated construction costs make the development of full-service hotels difficult at this time. If the client would like to include the third full-service scenario, we can do so at an additional fee of \$3,000.



7. Using competitive indexes, the relative competitiveness of each of the area hotels is evaluated.
8. This analysis will result in a quantification and documentation of probable future trends in the proposed subject hotel's occupancy, average rate (ADR), and overall rooms revenues.

A similar procedure will be utilized in projecting F&B revenues, if applicable, and other revenues. Using actual income and expense statements of comparable lodging facilities, we will develop income and expense estimates corresponding to the level of activity and quality of operations indicated by the projected occupancy and ADR.

A projection of income and expenses representing future expectations of income potential will be made for a ten-year period. This analysis will utilize HVS Software—a sophisticated, computerized financial-analysis package that was developed by Steve Rushmore and Suzanne Mellen. The logic behind the projection of income and expense is based on the premise that hotel revenue and expenses have one component that is fixed and another that varies directly with occupancy and facility usage. The software takes a known level of revenue or expense and calculates the fixed and variable components. The fixed component is then held constant, while the variable component is adjusted for the percent change between the projected occupancy and facility usage that produced the known level of revenue or expense. Our projected income statements conform with the Uniform System of Accounts for the Lodging Industry (USALI) and include a detailed line-by-line account of all revenue sources and expenses.

**Phase III:
Feasibility Analysis**

Based on the HVS' estimate of construction cost and the forecasted EBITDA, the return on investment (ROI) to the total property will be calculated. The indicated ROI will be compared to surveys reflecting the prevailing return requirements in the current market.

**Phase IV:
Written Report**

Complete documentation of our fieldwork and analyses will be set forth in a written report and will contain the following sections:

1. Purpose of the study
2. Description of the site and neighborhood
3. Review of the market area
4. Analysis of the market for hotel accommodations
5. Examination of existing and proposed competition



INVOICE FOR RETAINER

Date: April 18, 2024
Terms: Due Prior to Start of Assignment

Daniel Inloes
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

HVS Accounting Office
1615 Foxtrail Drive
Suite 230
Loveland, CO 80538
(970) 666-1377
www.hvs.com

Re: Proposed Hotel
Costa Mesa, California
(HVS staff member: Luigi Major, MAI)

Table with 2 columns: Project, Amount Due. Row 1: Market Demand and Feasibility Study - Retainer, \$0

Please make all checks payable to TS Worldwide, LLC
(dba HVS)
Tax ID #
Please remit to:
HVS
1615 Foxtrail Drive
Suite 230
Loveland, CO 80538

PLEASE INCLUDE A COPY OF THIS INVOICE WITH YOUR CHECK PAYMENT

Wire Instructions:
Please notify mculbertson@hvs.com of all wire transmissions.
JPMorgan Chase Bank
270 Park Avenue
New York, NY 10017
Account Name: TS Worldwide, LLC
Transit ABA #: 021000021
Swift Code: CHASUS33
Account Number: 682090837