

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
BKF ENGINEERS**

THIS AGREEMENT is made and entered into this 1st day of November, 2016 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and BKF ENGINEERS, a California Corporation ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide engineering design services, as more fully described herein; and

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

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

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

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the City's Request for Proposal ("RFP"), attached hereto as Exhibit "A," and Consultant's Response to City's RFP (the "Response") attached hereto as Exhibit "B," both incorporated herein by this reference.

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

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City's Chief Executive Officer ("City CEO") 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, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, 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 made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed Seventeen Thousand Four Hundred Dollars (\$17,400.00).

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

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

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

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

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "D," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

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

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of twenty four (24) months and eleven (11) days, ending on November 11, 2018, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. At the end of the term period, the Parties may mutually agree, in writing, to renew the contract for up to one (1) term period of one (1) year.

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

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually

rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

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

5.0. INSURANCE

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

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

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

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

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

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

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

6.0. GENERAL PROVISIONS

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

6.2. Representatives. The City CEO 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, facsimile 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; b) at the time of transmission if such communication is sent by facsimile; and c) 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:

BKF Engineers
18200 Von Karmen Ave.,
Suite 950
Irvine, CA 92612
Tel: (949) 526-8460
Fax:(949) 526-8499
Attn: Chris Rideout

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5303
Fax: (714) 754-5028
Attn: Ian Bronswick

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 "F" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

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

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

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without

City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

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

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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

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

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

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

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

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

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this

Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

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

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

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

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

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

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

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

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

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

Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

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

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

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

CITY OF COSTA MESA,
A municipal corporation



Chief Executive Officer

Date: 10/20/16

CONSULTANT



Signature

Date: 10/20/16

CHRIS RIDEOUT VICE PRESIDENT
Name and Title

94-1729773
Social Security or Taxpayer ID Number

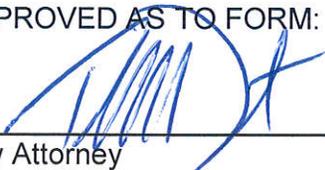
ATTEST:



City Clerk and ex-officio Clerk
of the City of Costa Mesa



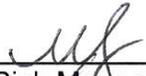
APPROVED AS TO FORM:



City Attorney

Date: 10/13/16

APPROVED AS TO INSURANCE:



Risk Management

Date: 9/30/16

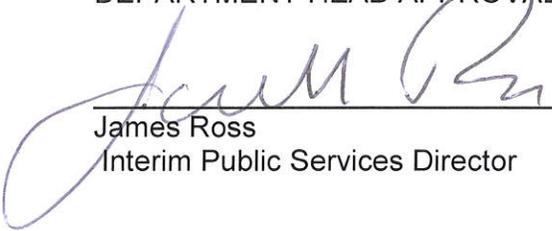
APPROVED AS TO CONTENT:



Project Manager

Date: 9/29/16

DEPARTMENT HEAD APPROVAL



James Ross
Interim Public Services Director

Date: 10/3/16

FINANCE APPROVAL



Stephen Dunivent
Interim Finance Director

Date: 10.25.16

EXHIBIT A
REQUEST FOR PROPOSALS



CITY OF COSTA MESA

CALIFORNIA 92628-1200

P.O. BOX 1200

PUBLIC SERVICES DEPARTMENT

June 24th, 2016

SUBJECT: REQUEST FOR PROPOSALS (RFP's) TO PROVIDE DESIGN SERVICES FOR THE DESIGN OF MASONRY BLOCK WALLS TO CLOSE OFF WALL OPENINGS AT VICTORIA STREET AND FAIRVIEW ROAD

Dear Consultant:

The City of Costa Mesa is requesting a proposal from your firm to provide design services for new masonry block walls needed to close wall openings along Victoria Street and Fairview Road. The schedule is as follows:

ENGINEERING SCHEDULE	DATE
1. Proposal Received by the City	7/26/16
2. City Council Award (Professional Services Agreement)	9/20/16
3. Kick off meeting	9/27/16
4. End of contract	9/20/21

Enclosed is a Request for Proposals to provide professional services for the subject project. The proposal requirements and the necessary professional services required by the City are stated within the RFP's. The consultant shall provide all services as requested in the RFP's and stated in the submitted proposal.

CITY OF COSTA MESA CONTACT PERSON

The City of Costa Mesa contact person for this project is Ian Bronswick, at (714) 754-5045.

PROPOSAL SUBMITTAL REQUIREMENTS

Please submit three (3) copies of the proposal and two (2) copies of the fee proposal no later than 3:00 p.m., on Tuesday, July 26, 2016. All proposals shall be delivered or mail to:

Ian Bronswick, Assistant Engineer
City of Costa Mesa
Public Services/Engineering
77 Fair Drive, 4th Floor
Costa Mesa, CA 92628

Mailing Address:
P.O. Box 1200, Costa Mesa, CA 92628-4193

Sincerely,

Baltazar Mejia, P. E.
City Engineer

**REQUEST FOR PROPOSALS FOR
DESIGN SERVICES OF CLOSURE WALLS
ALONG VICTORIA STREET AND FAIRVIEW ROAD**

I. INTRODUCTION

The City of Costa Mesa is requesting proposals for engineering design services for the design of masonry block walls to close off wall openings along Victoria Street and Fairview Road. The focal point of the design is to close wall openings at five locations along Victoria Street and one on Fairview Road (Exhibit A). The project scope includes preparation of plans, specifications, and estimates (PS&E) for the project. The structural calculations and design considerations shall be based on the 2013 California Building Code and City of Costa Mesa amendments and standards.

II. BACKGROUND

The City has received requests from several residents to close off wall openings at locations along Victoria Street and Fairview Road to assist in eradicating spots where illegal activities may take place. The City of Costa Mesa is seeking a licensed Civil Engineer with a strong background in design and analysis of reinforced concrete and masonry structures that has successfully completed similar projects and has extensive knowledge as it relates to seismic analysis and design, adaptive re-use, integrated design, as-built documentation, municipal public works building and public contract code.

A mandatory pre-bid site walk will be held on Tuesday, July 12th 2016 at 10:00am at the Raleigh Avenue cul-de-sac, South of Victoria Street (accessed from the South via Hamilton Street).

A. General Goals:

The goals for this project are as follows:

1. Meet with City staff to define and clarify the work plan and project elements.
2. Prepare a high quality set of Plans & Specifications and associated as-builts.
3. Provide staff support during bid phase, respond to RFIs.
4. Provide staff support during construction phase, review submittals, and respond to RFIs.

B. Minimum Consultant Qualifications:

The key project staff furnished by the consultant and sub-consultants must have at least five years' experience on similar type projects. All consultants responding to this Request for Proposal (RFP) will be evaluated on the basis of their expertise, demonstrated competence, ability to meet the project schedule, adequate staffing, and understanding of the project and responsiveness to the needs and concerns of the City of Costa Mesa.

III. CONTENT OF PROPOSAL

In order to maintain uniformity with all proposals furnished by consultants, the proposals shall be limited to a maximum of 20 pages (excluding front and back covers, section dividers, and resumes) and include the following:

- A. Project Understanding - provide a brief review of the project and any suggestions you might have to expedite the project or special concerns of which the City should be advised.

- B. Work Plan - define the project approach and scope, team assignments, and products/deliverables.
- C. Schedule - provide a detailed schedule indicating stages of work, time frames and milestones using the Critical Path Method (CPM). Deliverable milestones should include submittals and City review at 60%, 90%, and 100% progress levels.
- D. An organization chart and staffing plan identifying personnel on this project, with a brief resume on each individual (two pages max per person).
- E. A listing of similar projects that your firm has completed.
- F. Compliance with the Professional Services Agreement (PSA) requirements (see attached PSA).
- G. Fee proposal in a separately sealed envelope containing the following:
 - 1. Cover letter stating the total lump sum fee.
 - 2. A spreadsheet with a detailed fee schedule of the proposed costs. Each fee schedule shall depict individual project tasks and number of hours assigned for specific personnel, along with their hourly rates. The specific hourly rates shall include direct salary costs, employee benefits, overhead, and profit. Travel time will not be allowed. The fee proposal shall reflect all anticipated fee increases during the contract duration.
 - 3. In addition, the consultant is requested to include an amount of \$2,000 in the fee schedule for the project as a contingency to be used only as directed in writing by the City's PM.
- H. Submittal of three (3) duplicate proposals.

IV. CONSULTANT SELECTION COMMITTEE

The City of Costa Mesa Public Services Department has established a Consultant Selection Committee consisting of at least three members who have acted in the capacity of Project Manager. The consultant Selection Committee will evaluate the consultant on their ability to:

- A. Produce a well-engineered set of PS&E that will result in a minimum number of construction contract change orders.
- B. Produce a detailed set of construction documents which reflect field conditions and incorporate City standards as well as applicable codes and building requirements.
- C. Perform constructability and value engineering during the design process to anticipate, as much as possible, potential construction problems.
- D. Provide the City with adequate estimates, quantity takeoffs, detailed drawings, etc., to allow for effective construction management and quality control of the project.

V. ESTABLISHMENT OF FEES

The fee proposal will not be opened until the Proposal Selection Committee has evaluated the Consultants' proposals. In conformance with the Mini-Brooks Act, the City will select the Consultant based on qualifications, and then negotiate a contract price based on available

funding and a further breakdown of the "not-to-exceed" fee submitted in the fee proposal.

VI. PROFESSIONAL SERVICES AGREEMENT

- A. A sample of Professional Services Agreement is enclosed for your review (Exhibit B). The RFP and the consultant's proposal will be attached to and become part of the executed agreement as exhibits.
- B. No reduction of professional services as stated in both the City's RFP and the consultant's submitted proposal will be allowed.

VII. INSURANCE REQUIREMENTS

A certificate of insurance is enclosed for your reference (Exhibit C). Please refer to the sample agreement for the necessary amounts of general liability insurance, automotive, worker's compensation, and professional liability insurance. The appropriate endorsements are also shown within the sample contract agreement.

VIII. SCOPE OF CONSULTANT SERVICES

The preparation of final drawings, calculations, specifications, estimates, and utility coordination shall conform to the 2013 California Building Code and City of Costa Mesa amendments and standards. Plans shall be produced on standard 24" x 36" sheets at an appropriate scale for the work involved and saved in AutoCAD 2014 .dwg format. Final plans shall be provided on 4 mil erasable Mylar per the City standards. Consider the following:

- A. Design a system to meet the City of Costa Mesa's current and future needs. The plans shall include the following:
 - 1. Limits of removal of the existing wall(s) – Existing screening walls to be removed and replaced with sidewalk PCC.
 - 2. Plan and elevation of the new wall
 - 3. Structural section of the wall and its foundation
 - 4. Structural note sheets and details

The specifications shall include the necessary structural provisions to construct the wall and its foundation. The estimate shall include the structural items based on the plans prepared. The unit costs shall be based on average cost of similar construction with consideration to site conditions and constraints.

- B. Geotechnical Investigation – Foundation recommendations will be required for this project. A geotechnical engineer shall provide soils data and recommendations for the design of the foundation.
- C. Site Investigation – The selected Consultant shall pothole each proposed wall location prior to the development of foundation recommendations.
- D. Utilities and Agency Coordination - Perform all necessary research to establish precise location of all utilities in conflict with location of work. This includes coordination with Southern California Edison and the City's Building Division.
- E. Complete project contract documents and special provisions in a format consistent with current City projects and guidelines. The Consultant will be required to follow City Building Division procedures for plan checking and obtaining associated building permits.

- F. The Consultant will be requested to review and approve addenda and provide clarification to plans and specifications. Consultant shall attend the pre-construction meeting, and shall be available for consultation and assistance during construction of the project to clarify or explain items relating to the design. A sub-line item fee for "Construction Technical Support" may be included under this phase, to be included within the scope of work at the discretion of the City, contingent on fee and services.
- G. For construction budgeting purposes, submit to the City preliminary construction estimates with PS&E submittals at 60% and 90% completion, and any significant updates of the estimates as design work progresses. Prepare the final detailed construction quantity and cost estimate. Plans, specifications, and structural calculations shall be signed and stamped by a licensed Civil Engineer.
- H. Conduct a field walk-through with the City during the first PS&E submittal.
- I. Prepare and submit a Resident Engineer's file containing, at a minimum, final construction quantities and cost estimates, utility file, and all relative project information.
- J. The selected Consultant shall provide one fully-licensed copy of ENERCALC Structural Engineering Library Version 6 Software.
- K. The selected Consultant shall include items not specified as necessary to achieve completion and approval of the final design plans, specifications and estimates.

IX. CITY RESPONSIBILITIES

The City of Costa Mesa will be responsible for providing all available maps, plans, reports, and records on file with the City.

X. QUALITY ASSURANCE/QUALITY CONTROL

Quality Control shall be consistently and thoroughly applied throughout project development. Assigned QA/QC staff shall be technically well qualified to conduct the appropriate level of oversight, and demonstrate a concerted and sustained commitment to provide a high quality product. Concise written records shall be maintained by the Consultant on all activities. Firms considering proposal submittals are requested to have an in-house technical level of expertise to professionally address all aspects of the project. Project Design meetings shall be held once a month, at a minimum. The consultant shall be responsible for preparing meeting agendas, minutes, and presentation materials.

NOTE: All originals of plans, field notes, data and calculations, correspondence, reports, electronic files, etc., will be turned over to the City upon completion of design. Ten percent (10%) of the total contract fee will be withheld until the final PS&E, Resident Engineers File, and all project documents are submitted in acceptable form to the City.

XI. CONTRACT CHANGES

Any change in the scope of work resulting in a contract increase or decrease in fee shall be approved by the City **in writing prior** to commencement of actual change in work. No fee adjustment will be allowed unless said **prior** approval is authorized exclusively **in writing** by the City, without exception.

XII. RIGHT TO REJECT PROPOSALS

The City of Costa Mesa reserves the right to reject any or all proposals submitted, and no representation is made hereby that any contract will be awarded pursuant to this request for proposal, or otherwise. All costs incurred in the preparation of the proposal, in the submission of additional information, and/or in any other aspect of a proposal prior to the award of a written contract will be borne by respondent. The City will provide only the staff assistance and documentation specifically defined to herein and will not be responsible for any other cost or obligation of any kind that may be incurred by a respondent. All proposals submitted to the City of Costa Mesa in response to this request for proposals shall become the property of the City.

XIII. SUMMARY

Enclosed is the City of Costa Mesa professional services standard agreement and sample certificate of insurance for reference in preparing the proposal. The minimum insurance and endorsement requirements are stated within the enclosed documents. Should your firm be interested in submitting a proposal for this project, please forward to the City of Costa Mesa, Public Works Department, 4th Floor, City Hall, **on or before 3:00 p.m., July 26, 2016**. If additional information is required, please contact Ian Bronswick at (714) 754-5045, or email at: ian.bronswick@costamesaca.gov.

EXHIBIT A
LOCATION OF PROPOSED STRUCTURES

EXHIBIT A

LOCATION OF CLOSURE WALLS



EXHIBIT A

LOCATION OF CLOSURE WALLS



EXHIBIT B

SAMPLE PROFESSIONAL SERVICES AGREEMENT

**PROFESSIONAL SERVICES AGREEMENT
CITY OF COSTA MESA**

THIS AGREEMENT is made and entered into this ___ day of _____, 20__ (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and _____, a California _____ (“Consultant”).

WITNESSETH:

- A. WHEREAS, City proposes to utilize the services of Consultant as an independent contract to _____ as more fully described in Consultant’s Proposal attached as Exhibit “A”; and
- B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and
- C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit “A” (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, 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, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference.
- 1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City of Costa Mesa, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the department. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.
- 1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified.

Evaluations of the work will be done by the City Clerk 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, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, 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.** As compensation for the provision of services outlined in Exhibit "A" and in accordance with this agreement, Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "B," attached hereto and incorporated by reference. Consultant's total compensation shall not exceed _____ Dollars (\$ _____.00). Consultant shall devote xxx hours of staff time to complete the Project.
- 2.2. Additional Services.** Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal or in an amount exceeding \$____.00 unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.
- 2.3. Method of Billing.** Consultant may submit invoices to City supervisor 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 as of the date the invoice is created. City shall pay Consultant's invoice within fortyfive (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 for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

- 3.1. Commencement and Completion of Work.** The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "C,"

attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

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

4.0. **TERM AND TERMINATION**

- 4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of _____ months ending on _____, 20__, 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 as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.
- 4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. **INSURANCE**

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

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

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

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or

used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant.."

- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

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

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, facsimile 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; b) at the time of transmission if such communication is sent by facsimile; and c) 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:

IF TO CITY:

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

Tel: _____

Tel: 714-754-5156

Fax: _____

Fax: 714-754-5330

Attn: _____

Attn: _____

- 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 by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.
- 6.6. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

- 6.7. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.
- 6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.
- 6.9. Indemnification and Hold Harmless Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.
- 6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all

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

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

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

- 6.12. Cooperation.** In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.
- 6.13. Ownership of Documents.** All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from

all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

- 6.14. Public Records Act Disclosure: Consultant has been advised and is aware that 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, and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.
- 6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.
- 6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

- 6.17. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.
- 6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.
- 6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.
- 6.20. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.
- 6.21. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.
- 6.22. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 6.23. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.
- 6.24. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

- 6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.
- 6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.
- 6.27. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this

Agreement.

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

CITY OF COSTA MESA,
A municipal corporation

City Manager of Costa Mesa

Date: _____

CONSULTANT

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Risk Management

Date: _____

APPROVED AS TO CONTENT:

Project Manager

Date: _____

EXHIBIT C

SAMPLE CERTIFICATE OF INSURANCE

CERTIFICATE OF INSURANCE

CERTIFICATE HOLDER City of Costa Mesa 77 Fair Drive P. O. Box 1200 Costa Mesa, CA 92628-1200	INSURANCE COMPANIES AFFORDING COVERAGES Company Letter A Company Letter B Company Letter C Company Letter D Company Letter E
NAME AND ADDRESS OF INSURED	

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time, including attached endorsement(s).

COMPANY LETTER	TYPE OF INSURANCE	POLICY NO.	POLICY EXP. DATE	LIMITS OF LIABILITY IN THOUSANDS (000)		
					Each Occurrence	Aggregate
	GENERAL LIABILITY					
	Comprehensive Form			Bodily Injury	\$	\$
	Premises-Operations			Property Damage	\$	\$
	Explosion & Collapse Hazard					
	Underground Hazard					
	Products/Completed-Operations Hazard			Bodily Injury and Property Damage Combined	\$	\$
	Contractual Insurance					
	Broad Form Property Damage					
	Independent Contractors					
	Personal Injury			Personal Injury		\$
	AUTOMOBILE LIABILITY					
	Comprehensive Form			Bodily Injury (Each Person)	\$	
	Owned			Bodily Injury (Each Occurrence)	\$	
	Hired			Property Damage	\$	
	Non-owned			Bodily Injury and Property Damage Combined	\$	
	EXCESS LIABILITY					
	Umbrella Form					
	Other than Umbrella Form			Bodily Injury and Property Damage Combined	\$	\$
	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY			Statutory		(Each Accident)

NOTE: The Comprehensive General Liability policy and/or Automotive Liability policy is/are endorsed with the City of Costa Mesa Endorsement(s) shown on the reverse side.

CANCELLATION: Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City.

By: _____ Agency: _____ Date Issued _____
Authorized Representative

Description of operations/locations/vehicles: All operations performed for the City of Costa Mesa by or on behalf of the named insured in connection with the following designated contract:

(Project title and contract number)

NOTICE: This certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies, including attached endorsements.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization: The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to the subject project and agreement.
Location And Description of Completed Operations:
Additional Premium:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

Said policy shall not terminate, nor shall it be canceled nor the coverage reduced, until thirty (30) days after written notice to City.

Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.

Workers' Compensation and Employers' Liability Insurance Policy
Waiver of Our Right to Recover From Others Endorsement - California
WC 04 03 06

If the following information is not complete, refer to the appropriate Schedule attached to the policy.

Insured; Policy Number
Producer; Effective Date

Schedule

Person or Organization

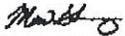
Job Description

Additional Premium %

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be the percentage, as shown in the Schedule applicable to this endorsement, of the California workers' compensation premium otherwise due on such remuneration.



Authorized Representative

Workers Compensation
Waiver of Subrogation Endorsement

Policy Number:
Named Insured:
Workers Compensation Carrier: Star Insurance Company

IT IS AGREED THE WE WAIVE ANY RIGHT TO RECOVERY WE MAY HAVE AGAINST THE PERSON OR ORGANIZATION SHOWN IN THE SCHEDULE BECAUSE PAYMENT WE MAKE FOR INJURY OR DAMAGE ARISING OUT OF "YOUR WORK" DONE UNDER A CONTRACT WITH THAT PERSON OR ORGANIZATION.

Schedule

Name or Person(s) or Organization:

WC 04 03 06

Copyright, Insurance Service Office, Inc., 1984

EXHIBIT D

CITY COUNCIL POLICY 100-5

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;

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

- b. Establishing a Drug-Free Awareness Program to inform employees about:
 - 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.

**EXHIBIT B
CONSULTANT'S PROPOSAL**

September 1, 2016

Revised September 13, 2016

Ian Bronswick – Assistant Engineer
City of Costa Mesa
Public Services/Engineering
77 Fair Drive – 4th Floor
Costa Mesa, CA 92628
Transmitted Via Email

Subject: Engineering and Surveying Proposal for Masonry Block Walls, Costa Mesa, California
BKF Project No. 20162063-10

Dear Mr. Bronswick:

BKF Engineers welcomes the opportunity to submit this proposal for engineering and land surveying services regarding the installation of masonry block wall located at various locations along Victoria Street and Fairview Road in the City of Costa Mesa (City). To arrive at the estimated effort required by our office for this project, we have outlined a proposed scope of services, assumptions, and associated fee based on our understanding of the project.

PROJECT UNDERSTANDING

Based on your proposal request and information obtained from the City, our understanding of the project is as follows:

The project proposes to install new masonry walls to eliminate existing wall openings off of Victoria and Fairview. The new walls will be of the same type, height and finishes as the existing walls. The location of the work is at end of the following cul-de-sac at the following locations:

- Raleigh Ave (South of Victoria)
- Meyer Place (North of Victoria)
- Wallace Avenue (South of Victoria)
- Dorset Lane (East of Fairview Rd.)
- Miner Street (North of Victoria)
- Puente Avenue (North of Victoria)
- Raleigh Avenue (North of Victoria)
- Sterling Avenue (South of Victoria)

BASIS OF DESIGN

Our proposal is based on:

- Designing new masonry walls and foundations using the 2013 California Building Code
- Utilize conservative bearing pressures as allowed by Uniform Building Code (no Geotechnical work)
- Assume "location" datum for both vertical and horizontal control at each site (i.e. not on City datum)
- Use 2015 Caltrans Standard Specifications

SCOPE OF SERVICES

TASK 1 – PRE-DESIGN SERVICES

- 1) **Topographic Survey** – Our field crews will perform a topographic survey to locate topography within the site area location. Survey will gather information on: walls, sidewalks, utilities, and landscape areas.
- 2) **Utility Coordination** – BKF will send letters requesting record information from utility companies and will document the information received by inserting into the topographic survey to create a project base map. If based on the information provided to BKF there appears to be a potential utility conflict with the proposed walls, BKF will request the utility pothole and expose their facilities for documentation. If after the utility is exposed, there is a conflict, BKF will coordinate a relocation plan with the utility.

If a utility company refuses to pothole their facility, BKF will document the record location on the plans and will specify in the Project Specifications that the Contractor shall pothole and document the utility and provide the information to the City.

- 3) **Field Review**– After the base mapping is complete, BKF will conduct a field review with City personnel to on confirm existing conditions and limits of removals of existing facilities.

TASK 2 – CONSTRUCTION DOCUMENTS

- 1) **Construction Drawings** – We will prepare the following drawings:
 - a. Composite Site Plan showing:
 - a. Existing Conditions
 - b. Limits of Demolition
 - c. Wall/Improvement Layout
 - d. Construction and Structural Details
- 2) **Specifications** – BKF will prepare final technical specifications in Caltrans format.
- 3) **Calculations** – BKF will prepare structural calculations for the design of the new walls. The calculations will only be provided for the most complex wall.
- 4) **Cost Estimate** – BKF will prepare a construction cost estimate and Bid Schedule at 100% submittal.
- 5) **Meetings** – BKF will attend one (1) meeting with the City to review the 60% comments.
- 6) **Submittals** - BKF will provide submittals at the 60% and 100% level of completion.

TASK 3 – CONSTRUCTION SUPPORT

- 1) **Site Observation Visits** – BKF will visit the site to provide clarification of the consultant’s design intent for the contractor, architect or owner. We have allocated fee for two (2) visits.
- 2) **Requests for Information** – BKF will respond in writing to written requests for information associated with civil design items.
- 3) **Submittal Review** – BKF will review and return submittals for those items included in the scope of work.
- 4) **Resident Engineer’s File** – BKF will provide a file containing final construction quantities, utility file, cost estimate and other relative Project information.
- 5) **Record Drawings** - At the end of construction, BKF will prepare Record Drawings based on the Contractor supplied redlines of changes to the design plans.

SCOPE QUALIFICATIONS AND ASSUMPTIONS

BKF Engineers' services are limited to those expressly set forth in the scope. BKF shall have no other obligations or responsibilities for the project except as provided in this proposal letter, or as agreed to in writing. BKF will provide the scope of services consistent with, and limited to, the standard of care applicable to such services.

For the scope of work identified, we have assumed the following:

1) Basis of Design and Assumptions

- a. **Right-of-Way** – All work is assumed to be within the existing City ROW. No ROW evaluation or boundary resolution is provided in this proposal.
- b. **Geotechnical Report** – A geotechnical report will not be prepared for this Project. Structural design will use conservative UBC values for bearing pressure.
- c. **Existing Utilities** – Unless otherwise indicated or provided by others, any existing utilities identified on BKF's drawings/plans are based on information obtained by BKF, or provided to BKF, and may not be accurately documented in their horizontal location or vertical profile.
- d. **Potholing** – Potholing services are not included in this proposal.
- e. **Site Landscape/Irrigation** – Areas where demolition of existing sidewalk connecting the cul-de-sacs to the main roads occurs, the plans will only show the ground fine graded (i.e no landscape or irrigation). It is assumed that after the project, City forces will modify the irrigation system and install landscaping as necessary.
- f. **Meetings** – Meetings will be held in Cota Mesa and will have a maximum duration of three (2) hours including travel time.
- g. **Drawings** – All drawings will be prepared in AutoCAD format. We will submit copies of all drawings in both electronic and paper format.
- h. **WQMP/Storm Water Pollution and Prevention Plan (SWPPP)** – Due to the small size of this project, a WQMP/SWPPP is not required.

SCHEDULE

We understand that the design phase will commence immediately and is anticipated to be completed by November 1, 2016.

COMPENSATION

1) BASE SCOPE OF WORK:

BKF proposes to provide the services on a Lump Sum basis. We will invoice for our services on a percent complete basis per task summarized as follows:

Task	Description	Fee
1	Pre-Design Services	\$ 7,200
2	Construction Documents	\$ 9,000
3	Construction Support	\$ 1,000
	Reimbursables	\$200
Total Labor Fee		\$17,400

Thank you for the opportunity to present this proposal. We look forward to assisting in developing this project. Please contact me at (949) 526-8462 if you have any questions regarding our scope of services.

Sincerely

BKF ENGINEERS



Chris Rideout, PE
Vice President

Attachments: Firm Profiles

Firm Profiles



For over 100 years, BKF Engineers (BKF) has been Delivering Inspired Infrastructure for our clients.

Through this, we have earned our clients' trust and thereby won their repeat business. We work hard to help our clients achieve their goals, and get their projects to the finish line. Working in

collaboration with agency stakeholders, BKF has developed extensive local knowledge that provides us with a deep understanding of issues relating to feasibility, permitting, and entitlement approvals. BKF provides civil engineering, land surveying, and land planning services for government agencies, institutions, developers, architects, contractors, school districts, and corporations. Our markets include transportation, public works, and healthcare, education, residential, commercial, industrial, and corporate.

We provide a number of specialty services including sustainable design, site accessibility consulting, hydrology/hydraulics, traffic signal design, and 3D laser scanning. BKF has produced some of the most recognized projects in California. By combining our years of experience in diverse markets with new, innovative approaches to problem solving we have grown to our current 11 offices with over 394 experienced staff. We look forward to Delivering Inspired Infrastructure for your projects to help you improve the Community.



Established in 1986, Biggs Cardosa Associates, Inc. (BCA) is a California corporation that

provides professional consulting services in the specialized field of Structural Engineering from our offices in Orange, San Francisco, San Jose, Oakland and Fresno, California. These services are provided by 90 professional and technical personnel, more than half of which are registered Structural or Civil Engineers. BCA's services are offered to public agencies and professional engineers on a wide variety of projects including bridges, retaining walls, sound walls, and various transportation and infrastructure projects. BCA specializes in the design, rehabilitation, modification, seismic retrofit and replacement of these structures.

SOUND WALL/RETAINING WALL PROJECT EXPERIENCE

- 5 Canyons Parkway Retaining Walls, Castro Valley
- 8 Mile Road Retaining Walls, Stockton
- SR 17 Retaining Walls, Bear Creek Road, Los Gatos
- 101/Hillsdale Blvd. Retaining Walls, San Mateo
- El Portal Gateway Improvement Project, San Pablo
- SR4 Widening, Retaining & Sound Walls, Contra Costa County
- I-580 / Bellam Blvd. Sound Wall, San Rafael
- Sand Hill Road Retaining Wall, Menlo Park
- Vasona Corridor Light Rail Project Sound Walls, San Jose
- Old Oakland Road Sound Walls, San Jose
- E237/N880 Connector Separation Sound Walls, Milpitas
- University Ave / Highway 101 Sound Walls, Palo Alto
- Bethel Ave Box Culvert Widening Sound Wall, Fresno County
- 85/101 South IC, Coyote Creek Bridge Sound Walls, San Jose
- 85 Corridor Sound Walls, Santa Clara County
- SR4 Widening, Retaining & Sound Walls, Contra Costa County
- Fullerton Grade Separation Retaining Walls, City of Industry
- Gerald Desmond Bridge Retaining Walls, Port of Long Beach
- Berryessa Creek Bridge Retaining Walls, Milpitas
- Tustin Ave. / Rose Drive MSE Walls, Placentia/Anaheim

EXHIBIT C
FEE SCHEDULE

PROFESSIONAL PERSONNEL SERVICE FEES

JANUARY 1, 2016 - DECEMBER 31, 2016

PERSONNEL

HOURLY RATES

ENGINEERING

Senior Associate	\$200.00
Associate	\$194.00
Project Manager	\$184.00 - \$190.00
Engineer IV	\$171.00
Engineer I, II, III	\$120.00 - \$138.00 - \$157.00

PLANNING

Planner I, II, III	\$120.00 - \$138.00 - \$157.00
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SURVEYING

Senior Associate	\$200.00
Associate	\$194.00
Project Manager	\$184.00-\$190.00
Surveyor I, II, III, IV	\$120.00 - \$138.00 - \$157.00 - \$171.00
Survey Party Chief	\$159.00
Survey Chainman	\$103.00
Apprentice I, II, III, IV	\$63.00 - \$84.00 - \$93.00 - \$99.00
Instrumentman	\$137.00

DESIGN AND DRAFTING

Technician I, II, III	\$116.00 - \$123.00 - \$135.00
Drafter I, II, III, IV	\$90.00 - \$100.00 - \$108.00 - \$119.00
Student Engineer/Surveyor	\$63.00

CONSTRUCTION ADMINISTRATION/QSP-QSD

Senior Construction Administrator	\$180.00
Resident Engineer	\$133.00
Field Engineer I, II, III	\$120.00 - \$138.00 - \$157.00

SERVICES AND EXPENSES

Project Assistant	\$75.00
Clerical/Administrative Assistant	\$63.00

Principals' time on projects is chargeable at \$223.00- \$245.00 per hour.

Charges for outside services, equipment, and facilities not furnished directly by BKF Engineers will be billed at cost plus 10%. Such charges may include, but shall not be limited to printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; special fees, permits, and insurance; transportation on public carriers, meals, and lodging; and consumable materials. Mileage will be charged at the prevailing IRS rate per mile.

Monthly invoices are due within 30 days from invoice date. Interest will be charged at 0.833% per month on past due accounts.

Expert witness/litigation rates are available upon request.

EXHIBIT D
PROJECT SCHEDULE

DESIGN OF MASONRY BLOCK WALLS TO CLOSE OFF WALL OPENINGS AT VICTORIA STREET
AND FAIRVIEW ROAD

Tentative Schedule for Upcoming Project Milestones

Item	Description	Estimated Date
1	Prepare & Advertise Design Services Package	06/24/2016
2	Receive Bids	No bids rec'd
2A	Receive Additional Proposals	09/01/2016
3	Review Bids, Provide Recommendation to Award	09/08/2016
4	Design	10/7/2016 - 1/10/2017
5	Advertise for Construction	01/27/2017
6	Award Contract, Issue NTP	04/28/2017
Anticipated Start of Construction:		SPRING 2017