CITY OF COSTA MESA PROFESSIONAL SERVICES AGREEMENT WITH TKE ENGINEERING, INC.

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 15th day of October 2024 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and TKE ENGINEERING, INC. a California corporation ("Consultant").

RECITALS

- A. City proposes to utilize the services of Consultant as an independent contractor to provide professional engineering staff support and program services on an as needed basis, as more fully described herein; and
- B. Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and
- C. City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. No official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONSULTANT

- 1.1. <u>Scope of Services</u>. Consultant shall provide the professional services described in City's Request for Proposals, attached hereto as Exhibit "A," and Consultant's Proposal, attached hereto as Exhibit "B," both incorporated herein.
- 1.2. <u>Professional Practices</u>. 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. <u>Performance to Satisfaction of City</u>. Consultant agrees to perform all the work to the complete satisfaction of the City. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:
 - (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;

- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.
- 1.4. <u>Warranty</u>. 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. <u>Non-Discrimination</u>. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.
- 1.6. <u>Non-Exclusive Agreement</u>. 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. <u>Delegation and Assignment</u>. 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. <u>Confidentiality</u>. 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. <u>Compensation</u>. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement. Consultant's total aggregate annual compensation shall not exceed Four-Hundred Thousand Dollars (\$400,000.00).

- 2.2. <u>Additional Services</u>. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City Manager or designee, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.
- 2.3. <u>Method of Billing</u>. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.
- 2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

3.0. TIME OF PERFORMANCE

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

4.0. TERM AND TERMINATION

- 4.1. <u>Term.</u> This Agreement shall commence on the Effective Date and continue for a period of approximately fifty-six (56) months, ending on June 30, 2029, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.
- 4.2. <u>Notice of Termination</u>. 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. <u>Compensation</u>. 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. <u>Documents</u>. 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. <u>Minimum Scope and Limits of Insurance</u>. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent A.M. Best's Rating Guide, and approved by City:
 - (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.
 - (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.
 - (c) Workers' compensation insurance as required by the State of California.

Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.
- 5.2. <u>Endorsements</u>. 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. <u>Deductible or Self-Insured Retention</u>. 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. <u>Certificates of Insurance</u>. 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. <u>Non-Limiting</u>. 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. <u>Entire Agreement</u>. 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. <u>Representatives</u>. 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. <u>Project Managers</u>. 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. <u>Notices</u>. Any notices, documents, correspondence or other communications concerning this Agreement, or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

IF TO CITY:

TKE Engineering, Inc. 2305 Chicago Avenue Riverside, CA 92507 Tel: (951) 680-0440 Attn: Terry Renner, P.E. City of Costa Mesa 77 Fair Drive Costa Mesa, CA 92626 Tel: (714) 754-5184 Attn: Ramin Nikoui

Courtesy copy to:

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

- 6.5. <u>Drug-Free Workplace Policy</u>. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "D" and incorporated herein. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.
- 6.6. <u>Attorneys' Fees</u>. If 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. <u>Governing Law</u>. 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. <u>Assignment</u>. 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.
- Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, 6.9. hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in the performance of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon negligence, recklessness, or willful misconduct in the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification

of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. In no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

- 6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time. or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.
- 6.11 Conflicts with Independent Contractor. Contractor/consultant's duties and services under this Agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering into this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor/consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor/consultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this Agreement.
- 6.12. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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

- 6.13. <u>Cooperation</u>. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.
- 6.14. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.
- 6.15. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 7921,000 (formerly 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 7924.510 (formerly Section 6254.7), and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.
- 6.16. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, et seq.) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

- 6.17. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.
- 6.18. <u>Prohibited Employment</u>. Consultant will not employ any regular employee of City while this Agreement is in effect.
- 6.19. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.
- 6.20. <u>Costs</u>. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.
- 6.21. <u>Binding Effect</u>. This Agreement binds and benefits the parties and their respective permitted successors and assigns.
- 6.22. <u>No Third Party Beneficiary Rights</u>. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.
- 6.23. <u>Headings</u>. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.
- 6.24. <u>Construction</u>. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 6.25. <u>Amendments</u>. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.
- 6.26. <u>Waiver</u>. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of

this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

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

[Signatures appear on following page.]

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

CONSULTANT Date: Signature [Name and Title] **CITY OF COSTA MESA** Lori Ann Farrell Harrison City Manager ATTEST: Brenda Green City Clerk APPROVED AS TO FORM: Kimberly Hall Barlow City Attorney APPROVED AS TO INSURANCE: Date: _____ Ruth Wang

Risk Management

ATTACHMENT 2

APPROVED AS TO CONTENT:	
Ramin Nikoui Project Manager	Date:
DEPARTMENTAL APPROVAL:	
Raja Sethuraman Director of Public Works	Date:
APPROVED AS TO PURCHASING:	
Carol Molina Finance Director	Date:

ATTACHMENT 2

EXHIBIT B CONSULTANT'S PROPOSAL

July, 30 2024

Stephanie Urueta
City of Costa Mesa
77 Fair Dr.
Costa Mesa, CA 92628

Subject: Request for Proposal for On-Call Engineering Staff Support & Program Management Services

Dear Ms. Urueta,

Thank you for the opportunity to present TKE Engineering, Inc. (TKE)'s proposal to provide professional Engineering Staff Support & Program Management Services to the City of Costa Mesa (City). We have been providing various Cities with engineering and project management services. and are highly qualified to perform the engineering services necessary. TKE is enthusiastic about the opportunity to assist the City with these services.

Why should the City choose TKE to provide the requested engineering services? Please consider the following:

- 1. Firm Identification TKE, a California Corporation, is a full service, multi-disciplinary consulting corporation located at 2305 Chicago Avenue, Riverside, California 92507 and can be found online at www.tkeengineering.com or reached by phone (951) 680-0440. We have 24 years of experience with providing on-call engineering services to public agencies and are highly qualified to perform the services necessary for project delivery.
- 2. **Key Contact** Terry Renner, P.E., P.L.S., Q.S.D., Principal-in-charge, is an authorized signatory of the firm and will be TKE's contact person for the duration of the proposal evaluation and contract. He can be contacted at 2305 Chicago Avenue, Riverside, California 92507 or reached by telephone at (951) 680-0440 and e-mail at trenner@tkeengineering.com.
- **3. Grant Funding Experience and Qualifications** TKE has been providing design, project management and program management services on over \$300M in federally and state funded public works projects to numerous municipalities for the past 24 years. As such, we have a thorough knowledge of the Caltrans LAPM standards and requirements.
- **4. Statement & Proposal Validity** TKE's proposal shall remain valid for a period no less than 90 days from the date of submittal. All information submitted within this proposal are true and correct.
- Acknowledgement of Addendum TKE acknowledges that no addendum has been posted regarding this oncall.
- **6. Authorization** TKE's proposal letter is signed by a person who is authorized to bind the company to contract agreements.

Thank you for your consideration. TKE would very much appreciate the opportunity to provide Engineering Staff Support & Program Management Services. If you have any questions, please call me at (951) 680-0440.

Sincerely,

Terry Renner, P.E., P.L.S., Q.S.D. | Senior Vice President





SECTION B | BACKGROUND AND PROJECT SUMMARY

The City of Costa Mesa desires to contract staff augmentation for engineering consultant services to provide on-call engineering staff support and program management services for the City's Transportation Services Division. The proposed staff augmentation services will be an extension of City Staff and will assign an individual or individuals to work with the City for project management of current and future consultant contracts for several locally funded and federally funded transportation improvement projects, and providing general support to the Transportation Services Division. The City may elect to choose one or more consultants to provide the services for a not-to-exceed fee based on tasks agreed to by the City and Consultant(s). The types of services are briefly discussed below:

On-Site Staff Augmentation Services: The selected consultant will be an extension to City staff and will provide a variety of transportation planning and traffic engineering services and address ongoing issues. The selected consultant will be required to physically work at City Hall and remote work is not allowed. The selected consultant, depending on the final agreement with the City, may be contracted to work up to full-time.

Transportation Improvement Projects: There are several ongoing transportation improvement projects. The consultant will act as the project manager and provide design and construction oversight, coordinate with other divisions and departments, and assist staff in day-to-day activities.

Program Management: The City has several pending locally-funded and federally-funded Improvement Program (CIP) projects, some of which are underway. Services required include developing Request for Proposals (RFPs), grant management, managing design consultants, bid and award process, and overall project management. The selected consultant will manage all project activities towards their successful completion while following all applicable local, state, and federal guidelines and all grant requirements. Specific tasks will also include reviewing design plans, attending community outreach meetings, reviewing consultant invoices, preparing grant reimbursement invoices where necessary and maintaining project records. The consultant shall have experience using the Local Assistance Procedures Manual and working on grant funded projects administered by Caltrans.

Some of the Transportation Services Division's pending projects include:

- △ Fairview Road Active Transportation Improvements (federally funded)
- △ Adams Avenue Active Transportation Project– Multipurpose Trails (federally funded)
- △ Fairview Road Belfast Avenue Traffic Signal Design
- △ Signal Modernization for Systemic Safety Improvements (federally funded)
- △ Mesa Drive Santa Ana Avenue Bicycle Facility Project
- △ Mesa Verde Drive East & Peterson Place Bicycle Facility Project





SECTION C | METHOD AND APPROACH

1 PROJECT APPROACH

Our approach to your project, recognizing that both schedule and budget are of primary concern for grant funded projects, dictates that decisions must be made quickly and carefully. When this is coupled with the various constraints present, it is critical that the City choose a consultant with a proven track record of delivering. With a familiar team of senior level design and management professionals for local and grant funded projects, TKE is the right choice for this project.

With grant funded projects, our experience tells us that there has to be a proactive approach to completing the work. This includes early identification of critical design elements and accurate cost estimating throughout the entire process, as well as familiarity with the funding source. In preparing this proposal, our team established key issues so we can "hit the ground running" to make this a successful project for the City.

TKE's goal is the successful project delivery of the City's projects. Our definition of successful project delivery is:

- △ Task/Project Completion that Meets all Project Safety Requirements
- △ Task/Project Completion that Protects the City's Interests
- △ Task/Project Completion on Schedule
- △ Task/Project Completion within Budget

To successfully achieve each of the items listed above, it is vital that an efficient and effective form of communication is maintained throughout the project duration. TKE's staff is highly trained in the art of communication. By way of phone calls, emails, and in person meetings, TKE regularly and routinely keeps City staff informed of all aspects of the project. Through the preparation of meeting minutes, progress reports and project update memorandums

TKE ensures that City staff is fully appraised of the project status.

CRITICAL ISSUES

TKE has extensive experience with numerous grants including but not limited to ATP, SR2S and HSIP State and Federally funded design projects. TKE has prepared design for five SR2S and ATP projects within the past five years and numerous other HSIP projects for more than ten different cities throughout Southern California. The project scope and management components for this contract will likely include every element for several projects in which we have recently completed or still working on with other cities. With our in depth understanding of pavement rehabilitation, ADA requirements, roundabout design, pedestrian and bicycle facilities, traffic calming relationships with City Staff, knowledge of the funding source and wide range of experience, TKE is able to hit the ground running for the design of the current project.

IDENTIFICATION OF CRITICAL DESIGN ELEMENTS

Our approach to identifying critical issues will be to immediately go into the field and document all the critical design elements so they can be presented to the City. This will give us a head start on instructing our survey team about what detailed information to collect. Some of these elements include key ground elevation information at the curb returns to determine how ADA access will be maintained and how proposed bike lanes will transition through the project.

PRIVATE IMPROVEMENTS

Private improvements such as mailboxes, fences, walls and landscaping may be impacted by the street improvement projects. TKE will identify such impacts early during project design and will develop an action plan for working with residents that will be impacted. Our goal will be to complete design that will provide ADA accessibility at the same time as minimizing private property impacts.





UTILITY COORDINATION

Projects often will require some utilities to be relocated and/or adjusted for the proposed improvements. These facilities may include water backflow, water meters, telephone risers, and communication boxes to list a few. We will identify these facilities early in project design to begin coordination at the earliest opportunity. Agencies that maintain private utilities can be cumbersome in getting facilities relocated. Early coordination will prevent project delays.

ACCURATE COST ESTIMATING

TKE understands the limits on grant funding. Because of the limited budget for this project, it is important to keep costs controlled. Our approach to controlling costs is to provide frequent and accurate cost estimates by using TKE's detailed cost estimating database. In addition to using this database, TKE utilizes our considerable experience with Construction Management to assist in providing constructability reviews and cost estimating based on current information from our on-going projects. Finally, with the current economic climate, construction costs are widely varying. We will also discuss the project elements with local contractors to assure that we have the most current construction information available so that the City can ensure the most value for the public's dollar.

FAMILIARITY WITH FUNDING SOURCE

TKE is well versed with Caltrans Local Assistance requirements as well as the general guidelines for implementing State and Federal funded transportation projects. They include:

- Requesting that Caltrans furnish an expenditure authorization number.
- Submitting allocation request and finance letters to Caltrans Local Assistance requesting reimbursable costs allocation
- Ensuring Caltrans prepares a Program Supplement Agreement for City execution. If the City does not have a "State Funds Master

- Agreement" on file with Caltrans, one will be required.
- Ensuring that the City acquires Local Assistance approval for all required environmental clearances (CEQA/NEPA) and right-of-way needed for the project.
- Ensuring that the project complies with the requirements of the Americans with Disabilities Act.

Processing invoices to Caltrans Local Assistance for reimbursement.





TKE Engineering, Inc. | AT A GLANCE

















City/District Engineer

City/District Engineer in 5 Cities/Districts

Staff Augmentation

TKE currently provides Traffic and Transportation / Staff Augmentation in 12 Cities / Counties /

Municipal On-Call Contracts

TKE currently provides Project Management, Traffic Engineering, Civil Engineering Design, Project Support, and Survey services for more than 30 Cities / Counties / Districts throughout Southern California

Size of Organization

59 Professional Engineers, Project Managers, Traffic Engineers, Traffic Inspectors, Surveyors, Plan Checkers, Designers, Construction Managers, and Support Staff

Location of Office

TKE Engineering, Inc. 2305 Chicago Avenue Riverside, CA 92507

Years in Business

TKE has conducted business for the past 24 years and has 24 years of experience in providing engineering services for municipalities including for Federal and State funded projects

Company Structure

TKE is a California Corporation founded in June 2000. TKE has no affiliates or subsidiary companies. California Business License Number: 00109901 TKE DIR No. 1000413173

Firm Owners

Michael P. Thornton, P.E., P.L.S., M.S. – President Terry Renner, P.E., P.L.S., Q.S.D. -Senior Vice President Steven W. Ledbetter, P.E. -Vice President

City of Costa Mesa Point of Contact

Terry Renner, P.E., P.L.S., Q.S.D. Senior Vice President 2305 Chicago Avenue Riverside, CA 92507 Phone: (951) 680-0440 Email: trenner@tkeengineering.com

SECTION D | QUALIFICATIONS & EXPERIENCE OF THE FIRM

FIRM PROFILE

Throughout our history of 24 years serving the Southern California region, we have provided planning, design, construction management and support services for numerous CIP projects, including those with grant funding. We have successfully completed complex and challenging projects for a variety of municipal agencies who have continued to request that we partner with them in delivering much needed infrastructure to their communities. TKE has extensive experience with an excellent reputation in traffic engineering projects.

We are sure that the successful results of our past performance in the delivery of projects, along with our firm's proven ability to utilize our experience for a complete and well-engineered project, will provide a valuable resource to the City.

TKE continues to provide numerous municipalities and agencies with consulting project management services and staffing for every facet of public works projects. TKE recognizes the importance of staffing based on a client's need and workload. Our flexible support and qualified staff enables our clients to serve their constituents in a cost effective and efficient manner. TKE proudly serves municipal agencies the following services on a routine basis:

TECHNICAL EXPERIENCE

TKE has extensive experience with the design, review and management street, traffic of transportation related improvements following the requirements of the Caltrans Highway Design Manual, AASHTO Geometric Design of Highways and Streets, NCHRP-Report 672 and FHWA Roundabout Informational Guide, Manual for Uniform Traffic Control Devices (MUTCD) and California MUTCD, related to design speeds, geometric configuration, horizontal and vertical curvature, super elevation, stopping and sight distances, grade and various other factors. In addition, TKE has experience with the design of State and Federally funded traffic and



transportation projects. Our funding experience includes design and funding management of projects with ATP, CDBG, SR2S, LPP, HSIP, ARRA, CMAQ, and SAFETEA-LU funding.

Our in-house team is comprised of engineers who are experts in completing grant funded street improvement projects and we have a long history of delivering safety enhancements to the various communities we serve. In the recent project experience section of our proposal, we provide detailed descriptions of a few recent projects that we have successfully delivered to our municipal partners. Because of our current and past relevant experience, our team has a solid understanding of procedures, City's policies requirements. Additionally, due to the successful acquisition of numerous funding sources for other municipal partners, we have in-depth experience with the requirements of grant funding mechanisms.

GRANT FUNDS MANAGEMENT

TKE's Grant Funds Management team enables our municipal and agency partners of any size to find potential funding sources and to prepare competitive funding applications. Additionally, after funds are awarded to a partner, TKE ensures compliance with state and federal funding requirements. In the past few years, TKE has obtained nearly \$100 million dollars in funding for our public works water and transportation improvements and has provided grant management assistance on design/construction projects for more than \$300 million of design/construction projects.

Our grant services are enhanced by integration with engineering services to facilitate and integrate project design. This expedites project start up and completion and ensures compliance with funding requirements.

TKE has assisted clients secure funding from the following programs:

- △ SRTS and SR2S (Safe Routes to Schools)
- △ Federal Transportation Funding thru Caltrans Local Assistance

- △ State Proposition 1E and 84 Flood Management Funding
- △ Community Development Block Grant (CDBG) Funding
- △ Active Transportation Program (ATP) Funding
- △ Highway Safety Improvements Program (HSIP) Funding
- △ Safe, Accountable, Flexible, Efficient Transportation Act: A legacy for users (SAFE TEA-LU)
- △ Mobile source Air Pollution Reduction Review Committee (MSRC)
- △ Economic Development Agency (EDA)
- △ California Department of Parks and Recreation
- △ State Water Resources Control Board State Revolving Fund (SRF) Program
- △ Department of Water Resources Proposition 40 Grant Program
- △ Department of Water Resources

 Infrastructure Rehabilitation Grant

As we develop knowledge of the City's standards and specifications, these advantages ensure that we will work quickly with City staff to create an efficient and fluid working atmosphere, ultimately translating to savings of cost and time to this project.

STAFF PAST EXPERIENCE

TKE has assembled an elite team of professionals to partner with the City to provide consulting project management and engineering services. TKE's management team came together out of the collective belief of long time practitioners that there needed to be, in the civil engineering and land surveying consultant's marketplace, a company that brought modern management techniques and new ways of thinking to the business of consulting services for engineering projects. Our management team is 100% accountable and responsible for TKE's work product and actively seeks feedback and suggestions on our services. For all further information please see Section F – Key Personnel.





CV SYNC - PHASE I & II

Coachella Valley Association of Governments (CVAG), Coachella Valley, CA



Client Contact: Eric Cowle | Program

Manager

Phone Number: (760)346-1127 Email: ecowle@cvag.org Project Cost: \$109M Completion Date: Current

Project Manager: Terry Renner, P.E., L.S., Q.S.D.

RELEVANCE TO COSTA MESA

- Public Works Construction Management Inspection Project
- Traffic Signal, Synchronization and
- Electrical Inspections
- State and Federal Grant

Management

DESCRIPTION

This project located in the Coachella Valley consists of upgrading the local agencies existing legacy (outdated) traffic signal controllers, traffic management systems, and communication systems with the latest off-the-shelf technologies in order to provide inter-agency traffic signal synchronization along three regional roadways including Highway 111, Ramon Road and Washington Street. The project improvements include advanced traffic management systems (ATMS), advanced transportation controllers (ATC), selected Intelligent Transportation System (ITS) elements, ITS sub-systems, and Ethernet/IP-based communications that will be expandable and scalable for future integration of ITS technologies and strategies, such as Integrated Corridor Management (ICM), Smart Cities, and Connected and Autonomous Vehicles. This project includes a Regional Traffic Management Center (RTMC) and local Traffic Operation Centers (TOC) that will have the capability to monitor, control of connected traffic signals, and be used as a monitoring tool for research and analysis to help determine regional system enhancements, operations, and maintenance.

SERVICES

Services included bid administration and pre-construction assistance, grant funding administration, construction management, inspection, and project closeout services

KEY STAFF

Terry Renner, P.E., L.S., Q.S.D, Justin Schlaefli, P.E., T.E., Stephen Biscotti, Michael Counce

COUNTY LINE ROAD TRANSPORTATION CORRIDOR (LPP)

City of Calimesa, CA



Client Contact: Mr. Will Kolbow | City Manager

Phone Number: (909) 795-9801 Email: wkolbow@cityofcalimesa.net

Project Cost: \$10.1M+ Completion Date: Current

Project Manager: Terry Renner, P.E., P.L.S., Q.S.D.

RELEVANCE TO COSTA MESA

- LPP State Grant Funded Project
- Right-of-Way Acquisition
- Major Arterial Reconstruction
- Various Pavement Strategies
- Extensive Utility Coordination and
- Community Outreach Efforts

DESCRIPTION

TKE prepared and obtained a grant for the City of Calimesa through the Road Repair and Accountability Act of 2017 (SB1) Local Partnership Program (LPP). TKE is preparing street widening and roundabout improvements for the construction of the County Line Road Transportation Corridor. The Project includes four (4) single-lane and one (1) multi-lane roundabouts, together with street, pedestrian, and bicycle improvements, to improve safety and efficiency throughout the corridor. The innovative approach to implement roundabout intersection throughout the corridor provides adequate capacity and level of service to remain a two-lane street; thus, significantly reducing right-of-way and construction costs to construct a four-lane corridor.

SERVICES

Services include grant coordination and management, design, topographic survey, right-of-way engineering, environmental assistance, roadway safety analysis, preparation of exhibits, cost estimates, coordination with California Transportation Commission, construction management, inspection, and construction staking.

KEY STAFF

Justin Schlaefli, P.E., T.E.., Steve Libring, T.E., Michael P. Thornton, P.E., L.S., Terry Renner, P.E., L.S., Q.S.D., Monae Pugh





ATP CYCLE 3 SAFE ROUTE TO SCHOOL PEDESTRIAN IMPROVEMENTS PROJECT

City of Fontana, CA



Client Contact: Phil Burum Phone Number: (909) 350-6727 Email: Pburum@Fontana.org

Project Cost: \$1.9M

Completion Date: November 2022

Project Manager: Terry Renner, P.E., L.S., Q.S.D.

RELEVANCE TO COSTA MESA

- ATP Funded Project
- Right-of-way Acquisition
- Municipal CIP Project
- Street Improvement Design
- Community Outreach Efforts

DESCRIPTION

TKE is currently providing design engineering services for the Safe Routes to Schools Pedestrian Improvements Project funded through ATP Cycle 3 for the City of Fontana. This project consists of the preparation of full Construction documents including plans, technical specifications, construction cost estimates (PS&E) and construction support services for 7,700 linear foot ADA and pedestrian enhancement project. The project includes the construction of curb, gutter, sidewalk, curb ramp, bike lane improvements, traffic signal modifications, utility relocations, private improvement restoration and signing and striping. TKE is coordinating with Caltrans for completion of the PES, right-of-way certifications and obtaining the RFA for construction.

SERVICES

Services included design, surveying, grant management, PES preparation, environmental compliance services, utility coordination, right-of-way engineering, and construction assistance

KEY STAFF

Terry Renner, P.E. P.L.S., Q.S.D.., Michael P. Thornton, P.E., L.S., Octavio Parada, Monae Pugh, Ron Musser, L.S.

ATP SAFE ROUTE TO SCHOOL – FONTANA AVENUE AND ARROW BOULEVARD

City of Fontana, CA



Client Contact: Phil Burum Phone Number: (909) 350-6727 Email: Pburum@Fontana.org

Project Cost\$1.1M

Completion Date: May 2018

Project Manager: Terry Renner, P.E., L.S., Q.S.D.

RELEVANCE TO COSTA MESA

- Traffic Engineering Services for Developer and CIP Projects
- Traffic Engineering Design
- Traffic Control Device Review and
- Citizen Request Analysis

DESCRIPTION

TKE provided design engineering services for the Safe Routes to Schools project funded through ATP Cycle 2 for the City of Fontana for Fontana Ave and Arrow Boulevard. This project consisted of the preparation of full Construction documents including plans, technical specifications, construction cost estimates (PS&E) and construction support services for the 5,900 linear foot ADA and pedestrian enhancement project. The project included the construction of curb, gutter, sidewalk, curb ramp, bike lane improvements, utility relocations, storm drain modifications, private improvement restoration and signing and striping. TKE successfully coordinated with Caltrans for completion of the PES, right-of-way certifications and obtaining the RFA for construction.

SERVICES

Services included design, surveying, grant management, PES preparation, environmental compliance services, utility coordination, right-of-way engineering, and construction assistance.

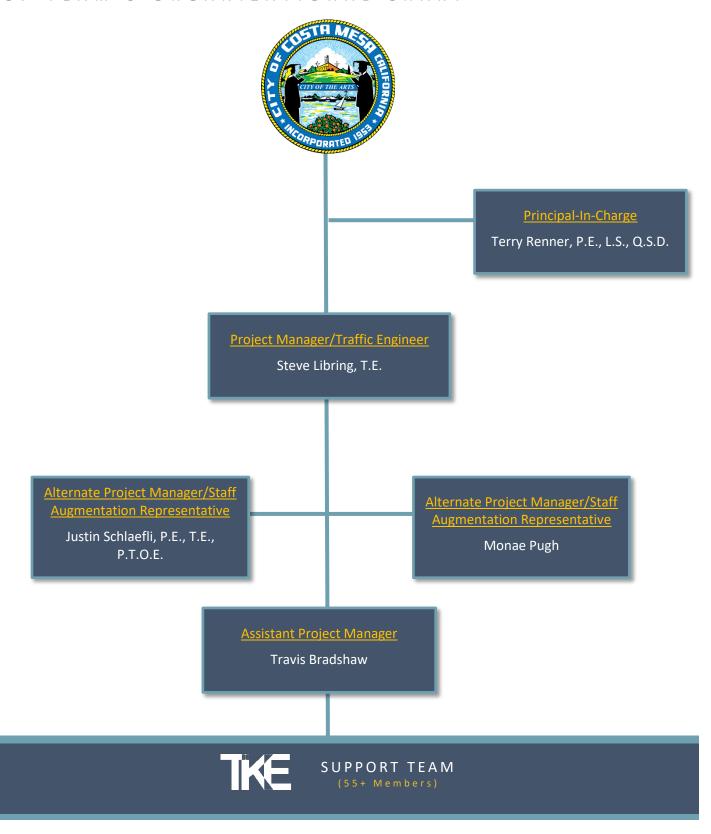
KEY STAFF

Terry Renner, P.E. P.L.S., Q.S.D.., Michael P. Thornton, P.E., L.S., Octavio Parada, Monae Pugh, Ron Musser, L.S.





3. TEAM'S ORGANIZATIONAL CHART









	HOURLY <u>RATE</u>
Principal in Charge Project Manager/Construction Manager/Licensed Surveyor Traffic Engineer (TE) Senior Engineer/Project Engineer (PE)/Senior Plan Checker Assistant Project Manager/Associate Engineer Assistant Engineer/Plan Checker/Designer AutoCAD Technician Engineering Technician Clerical Forensic Engineering Expert Witness Testimony	\$185.00 \$175.00 \$165.00 \$165.00 \$155.00 \$135.00 \$105.00 \$ 90.00 \$300.00 \$400.00
SURVEYING SERVICES	
2-Man Survey Crew (Prevailing Wage)	\$260.00
DEVELOPMENT SERVICES	
Managing Director Senior Project Manager Project Manager	\$185.00 \$135.00 \$105.00
CONSTRUCTION SERVICES	
Senior Construction Inspector (Prevailing Wage)	\$135.00 \$125.00
REIMBURSABLE COSTS	
In-house Reproduction	Cost Cost + 10% Cost + 10% Cost + 10%