

**PROFESSIONAL SERVICES AGREEMENT  
FOR PROFESSIONAL ENGINEERING**

THIS AGREEMENT is made and entered into this 1st day of December, 2012 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and BUCKNAM INFRASTRUCTURE GROUP, INC., a California Corporation (“Consultant”).

**WITNESSETH:**

- A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide professional engineering for pavement management program services 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.

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## **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 Twenty Thousand Eight Hundred and Twenty Dollars (\$20,820.00).

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 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 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 "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.

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#### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of two (2) years ending on December 1, 2014, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. At the end of the term period, Consultant and City may mutually agree, in writing, to renew the contract for up to four (4) term periods of one (1) year each.

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:

Bucknam Infrastructure  
Group, Inc.  
3548 Seagate Way, Suite 230  
Oceanside, CA 92056  
Tel: 760-216-6529  
Fax: 714-501-1024  
Attn: Peter J. Bucknam

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: 714-754-5378  
Fax: 714-754-5330  
Attn: Fariba Fazeli

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

  
\_\_\_\_\_  
Chief Executive Officer of Costa Mesa

Date: 1/8/13

  
\_\_\_\_\_  
Deputy

Date: 1.4.13

CONSULTANT

  
\_\_\_\_\_  
Signature

Date: 12-11-12

PETER BUCKNAM / PRESIDENT  
\_\_\_\_\_  
Name and Title

  
\_\_\_\_\_  
Social Security or Taxpayer ID Number

APPROVED AS TO FORM

  
\_\_\_\_\_

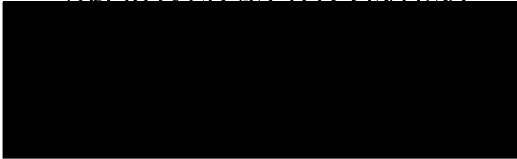
Date: 12/14/12

APPROVED AS TO INSURANCE:



Date: 12/7/12

APPROVED AS TO CONTENT:



Date: 12-7-12

**EXHIBIT A**  
**CONSULTANT'S PROPOSAL**



## Project Understanding / Approach

We have defined detailed phases to the scope of work in accordance to the City's RFP;

1. Project Implementation
2. Client Satisfaction
3. Project Schedule
4. Scope of Work (Major Tasks)

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### 1) Project Implementation

#### ***TASK 1.1: Project Kickoff***

The first step in implementing a successful pavement management program truly resides in frequent communication and timely scheduled data updates. For the City of Costa Mesa it will be essential to establish, up front, the Public Works/Maintenance pavement management priorities. Our team will set a Project Kickoff meeting to further discuss and review in detail the expectations of the project, technical approach, zone maintenance, Orange County Transportation Authority (OCTA) compliance, finalization of the scope of work and the review of schedule.

This effort will build consensus between the Street Maintenance and Engineering departments as well as build stronger ARTERIAL and LOCAL maintenance programs

The first key topics to be discussed will include the review and assessment of the existing MicroPAVER pavement plan/data, OCTA compliance, and survey areas based on recent maintenance work and schedules, new construction, data quality and condition, current pavement procedures, historical expenditure levels, and desired service levels.

**Deliverable: Meeting minutes, revised project schedule (if necessary)**

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#### ***TASK 1.2: Project Status Meetings - Quality Control Program***

##### **Status Meetings and Progress Reports**

- Minimum of three meetings during the project (kickoff, field, and status meetings)
- Field review meetings
- Monthly progress status reports will be delivered to City project manager

##### **Quality Control (QC)**

We will use a statistical sampling approach for measuring the quality of our field technician's work. In this manner, 10 percent (7 miles) of the original surveys will be re-surveyed by an independent survey crew, supervised by a field supervisor, and the results will be compared to the original surveys.

# Project Understanding / Scope of Work



Our QC process involves checking the field crews' work in a "blind study" fashion. Quality control checks will be performed at the end of each survey week. This will ensure that all field personnel are properly collecting distresses and pavement quantities for all street segments. **Since we are collecting distress information on our field Tablets with the Costa Mesa MicroPAVER database live, our staff will perform several quality control tests within the pavement management software using a sample set of the City of Costa Mesa's street distress data.** This will ensure that all system and analysis settings as well as City recommendations and standards are being followed.

As shown within the OCTA "Countywide Pavement Management Program, Guidelines Manual (CPMPGM)", our staff will follow and deliver on the requirements stated on Section 2.4, page 8 which require specific QA/QC data (Items A through G). Additionally, Chapter 3 requires numerous data/deliverables from local agencies for Measure M2 eligibility. All general PCI reporting will follow the Chapter 3 guidelines.

**Bucknam has already submitted fourteen (14) OCTA Measure M2 compliant reports for OC municipalities, they include:**

Brea	Irvine	Orange
Laguna Hills	Costa Mesa	RSM
Cypress	Laguna Niguel	Tustin
Fountain Valley	La Habra	Westminster
Huntington Beach	Newport Beach	

Our surveys follow the accepted OCTA windshield/walking requirements. A copy of the QA/QC plan utilized by our staff during the project will be submitted along with the PMP certification documents.

Our staff has already attended the OCTA MicroPAVER Distress Training Class held in November, 2011. In February, 2012 our staff attended the OCTA "calibration testing" to certify staff under the OCTA guidelines.

**Deliverable: Monthly Project Status reports, field review and project status meetings, OCTA QA/QC Plan**





## **2) Client Satisfaction**

### **TASK 2.1: Project Deliverables**

Shown throughout our Scope of Work, each Task is summarized with project deliverables. Client satisfaction will derive from frequent communication with the Project Manager and key staff members from the Engineering and Street Maintenance departments. Project success is created by delivering on three main factors;

- 1) Adherence to scope tasks and deliverables
- 2) Performing to the standard set by the Project Schedule; and
- 3) Controlling costs. Our Project Manager will follow each of these factors throughout the duration of the project

**Deliverable: Project Status Updates, as stated in Task 1.2**

## **3) Project Schedule**

### **TASK 3.1: Work Flow / Project Schedule**

Our project schedule shows each major task identified in our scope of work, as well as quality control milestones and meetings. Bucknam currently has ample staff to apply to this project in order to meet an aggressive schedule (3 to 4 field technicians will drive the proactive schedule).

**Per the request of the RFP, we have included the Critical Path Method (CPM) Project Schedule within Section 4 of our proposal.**

See key milestone dates from the project schedule below:

- Project Kickoff – December 3, 2012
- Survey Completion – March 15, 2013
- Delivery of draft PMP – March 29, 2013
- City comments returned to Consultant – April, 2013
- Submittal to OCTA of MicroPAVER Certification conforming to Renewed Measure M2 Eligibility Guidelines – June 4, 2013



# Project Understanding / Scope of Work



- Delivery of City CIP Final Report – June 4, 2013
  - All necessary OCTA data, reporting and revenue projections will be submitted prior to June 28, 2013
  - Costa Mesa CIP data/Final Report, reporting and revenue projections will be submitted by June, 2013
- Implementation of MicroPAVER version 6.5.2 – Any time after acceptance of Final PMP
  - Necessary MicroPAVER database will be delivered (.e65 format)
  - All pavement and GIS data pertinent to the project deliverables will be submitted with the Final PMP report, June 2013

## 4) Scope of Work (Major Tasks)

### **TASK 4.1: Update Maintenance and Rehabilitation Activities**

Based on the pavement maintenance that has been performed by in-house staff as well as contractual maintenance, our staff will review all street activities that have been performed during the past two years. This data will be entered into MicroPAVER to enhance the recommendations for the upcoming budgetary analysis and CIP reporting.

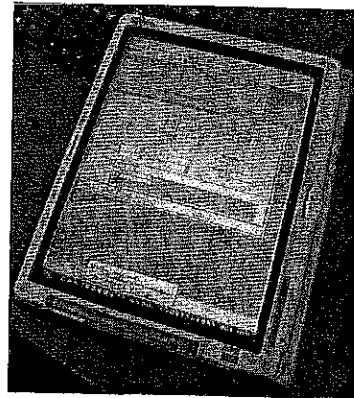
**Deliverable: Citywide Work History Report**

### **TASK 4.2: Conduct Pavement Condition Survey**

Once the pavement segmentation has been assessed and verified, the inspection of approximately 77 centerline miles will be performed. Our survey will ensure that all Master Plan of Arterial Highways (MPAH) routes are surveyed and up-to-date for OCTA compliance.

Our survey methodologies will include the following approach based on the City's cost and benefit analysis:

1. **Windshield** based MicroPAVER survey (performed on Tablets live in the field); this survey methodology is required by OCTA. Our staff will establish all inspection sample locations for survey based on MicroPAVER guidelines.



Distress types will be collected based upon actual surface conditions and physical characteristics of the segment. Surveying methods will be conducted by remaining consistent with MicroPAVER & the Army Corp of Engineers sampling guidelines while being flexible to current City practices.

Through our windshield surveys, we use a mixture of windshield and walking surveys based on the functional classification of the roadway and the street conditions found.

6.31

# Project Understanding / Scope of Work



We will use the City's GIS centerline live in the field to reduce survey times and project schedules. If the City has a recent high-resolution aerial (approx. 3") we will use this file during our field survey efforts to verify street measurements and other segment attributes.

Our first priority will be pavement condition analysis on the City's Arterial and Collectors to ensure that we satisfy the OCTA Measure M2 PMP requirements. We will use the OCTA Master Plan of Arterial Highways (MPAH) to assist in our survey the Arterial and Collector streets.

Our use of **MicroPAVER-Tablet units** allows our staff to collect pavement data with the City of Costa Mesa's **MicroPAVER database live in the field**. At the end of the day all electronic data is transferred to our office for quality control and management. **Our Tablet methodology sets us apart from the competition since we are using a paper-less inventory process to enter data; this in turn generates cost savings to enhance other portions of the project such as CIP reporting, MicroPAVER training, and on-call services.**

**Roadway Verification Survey** - A listing of the field attribute data that is updated/verified during the survey for the pavement management database is listed below:

## 1. Field Attribute Data (updated and/or verified)

- From/to, indicating the assigned limits of the section, sample test areas, street name, a street codification (arranged west to east and south to north)
- Street ranking indicating local, alley, arterial, collector, # of lanes, surface type
- Historical PCI tracking from previous inspections and 2013 PCI inspections
- Segment quantities, indicating the length, width, and total true area of the section
- Pavement distresses compliant with MicroPAVER – OCTA guidelines (i.e. alligator cracking, block cracking, rutting, long/trans cracking, weathering, etc.)

## 2. Conditional data will be evaluated for all street segments and will include:

- MicroPAVER 20 AC & 19 PCC distresses by type, severity and sample area
- PCI ratings (0-100); per segment, per grid zone, per maintenance zone and citywide
- Other known or found environmental issues (standing water, site condition, etc.)

**We welcome staff members from the City of Costa Mesa to join our surveys.** All pavement data will be entered into the City's most current licensed software (version 6.5). All items listed above will be maintained by our staff for the duration of this project. Data management will be performed in-house at our Laguna Niguel office. At the completion of the project, the MicroPAVER database will be placed within your information services/communication network.

## 3. Section Distress and PCI Reporting

Once inspections are completed, we will generate a draft Pavement Condition Index (PCI) Report for City staff to review. The City and our staff will review these reports to ensure that all inventory data is correct and the project is running smoothly.



PCI reports will include the necessary data listed within the Countywide Pavement Management Program, Guidelines Manual; Chapter 3 (Agency Submittals).

**Deliverable:** Citywide draft PCI report, Pavement segment data required within Chapter 3 MicroPAVER Guideline Manual (OCTA)

## ***DEVELOP RECOMMENDED IMPROVEMENT PROGRAM***

### ***TASK 4.3: Maintenance & CIP/Budgetary Analysis***

We will assist the City in developing the most cost-effective preventative maintenance, repair and rehabilitation strategies possible. This will be accomplished by meeting with the City to discuss and strategize maintenance activities that are currently being used by the City. Based on the City's current AC & PCC applications and other maintenance practices used we will conduct an historical and prospective analysis on the conditional and financial impact these practices have on the pavement network. Based on our fiscal and deterioration analysis, we will present our results and recommendations to City staff. This analysis will become an essential building block for the 2013-2020 maintenance programs.

We will establish a maintenance "decision tree" that will be used to generate pavement recommendations that match current 2013 maintenance approaches. This will be accomplished by assessing/updating the unique and individual deterioration curves within MicroPAVER based on functional class (i.e. arterial, collector, local) and age.

Our staff will review the Costa Mesa's deterioration curves that have been developed based on historical pavement condition, inspection, surface type, and road class. The curves will be modified based on 2013 pavement conditions. The strategies that are typically reviewed are rehabilitation and reconstruction (R&R), localized maintenance, slurry seals, and various overlay types, the expected improvement in pavement condition, the life-cycle extension that would result and the unit costs for maintenance.

All maintenance practices/unit costs will be integrated into MicroPAVER and will be derived from the most recent construction bids for pavement rehabilitation. We will account for inflation rates when long-term revenues projections are made.

**Our staff will also update the City's residential maintenance zone approach. We will focus on projecting budgets and maintenance recommendations for all streets within maintenance zones; this will allow us to proactively schedule maintenance efforts throughout the multi-year CIP as well as achieve the desired level of PCI across the City.**

Our Project Manager and Principal will work closely with City in defining repair and rehabilitation strategies during each fiscal year and within each tract/area defined by the City. Once the repair/rehabilitation strategies have been defined, the identification of a seven year Forecasted Maintenance schedule will be generated.

# Project Understanding / Scope of Work



The recommended budget scenarios will be identified on the basis of several criteria:

- Present pavement conditions; Desired levels of service and available resources
- Local Match Reduction guidelines identified by OCTA
- Scheduling with the City's maintenance zones and other capital projects (water, sewer)
- Accrued backlog levels and stabilization of maintenance backlog
- Future routine maintenance needs based on projected deterioration rates
- Future OCTA and MPAH objectives and improving citywide weighted PCI

The primary emphasis of this task is to maximize the programming of street maintenance projects using the most cost-effective strategies available and taking into account a life-cycle cost analysis. A working "draft" Final Report will be generated for City staff to review. The Draft and Final PMP report will include:

- Executive Summary / Findings and Recommendations
- Pavement Condition Index (PCI) reports;
- 7-Year CIP identifying arterial and residential maintenance (per section) recommendations (slurry, overlay, recon, etc.) associated with a construction cost
- GIS mapping

**Deliverable:** Two copies of the Draft Pavement Management Program Report

## ***TASK 4.4: OCTA Compliance Reports / Citywide CIP Report***

We will deliver the Final Report to the City which will be essential for staff reference and use as well as presented in a way that is beneficial for elected officials/upper management.

**This report will assist the City in complying with OCTA and its most recent Countywide PMP Guideline requirements.** The report will be prepared in a format that uses the information delivered by MicroPAVER in conjunction with the information and analysis performed by our team. The report will also provide the City with information on:

- Current inventory and pavement conditions indices (PCI) for all road classes
- Projected annual rehabilitation programs for street maintenance for a 7-yr period (ARTERIAL and LOCAL Forecast Maintenance Reports) that show the largest return on investment and acceptable levels of service
- Modeling and comparison of budget scenarios typically include:
  - Maintenance required to complete all streets within 7-years
  - Current / Actual budget projection (citywide approach)
  - **7-year CIP projection budget for OCTA submittal requirements**



- **Final Local Match Reduction budgetary models / results**
- Strategies and recommendations for the City's AHRP, Prop. 1B, Prop 42 and maintenance programs and procedures, including a preventative maintenance schedule
- Supporting documentation required by OCTA
- A detailed breakdown of deferred maintenance (backlog)

## **Registered Engineer**

Mr. Steve Bucknam, P.E. will supervise all operations, review all completed data and prepare and sign a final report incorporating the results of our pavement evaluation and conditions. We will provide engineered recommendations for pavement rehabilitation and replacement design based upon field data and analysis.

**Deliverable:** Three (3) copies of the Final Pavement PMP Report (plus one original signed by our Registered Engineer, CA No. 20903), in binder and electronic form (.pdf), will be sent to the City. Bucknam will provide three (3) CD copies of the Final PMP database and will install it at the City.

## ***TASK 4.5: Mapping and GIS Update***

As an enhancement and proactive approach to this project, our staff will update the existing Pavement-GIS link between MicroPAVER and the City's GIS system. The City's centerline will be used as the platform for updating the unique pavement-GIS layer.

Once the City has approved the Pavement Condition Report, we will develop the necessary MicroPAVER-GIS linkages. By using the unique ID's within the PMP and the City's GIS street segment ID's, we will create a one-to-one match for each pavement section in the GIS. As new pavement inspections and edits are entered into the PMP the link that we have created will display the most current PMP data through the City's GIS.

The maps described below will be incorporated into the City's Final PMP report:

- ❖ PCI values for every section
- ❖ Work History identifications
- ❖ 7-yr Arterial / Residential Rehabilitation and Slurry Seal Programs
- ❖ Functional classification maps

Our staff will upload all PMP data to the dedicated GIS layer and import the necessary GIS files into the City's GIS enterprise. A demonstration of the layers use, applications and reporting will be shown to the City.

Additionally, Bucknam has implemented several GIS Enterprise systems to agencies within Orange County (i.e. Fountain Valley, RSM).



We will demonstrate our GIS management capabilities, recommend enhancement to the Costa Mesa GIS and show a live example of our Digital Roadway Imaging services to City. This will demonstrate how the Costa Mesa GIS can be enhanced.

**Deliverable: Complete GIS files/themes based on list above (shapefiles).**

## **5) Optional Tasks**

### **TASK 5.1: Pavement Field & Software Training**

We will provide City staff with the quality, certified training and necessary skills needed to **steward and maintain the PMP**. This will include operation manuals for both field data collection and software use. Peter Bucknam, who is certified in the use of MicroPAVER, will conduct comprehensive multi-day training sessions covering segmentation management, reporting, and editing/updating the database. This is estimated to consist of a minimum of 12 hours of training. There is no minimum or maximum amount of people that can be trained under this methodology.

*Bucknam* will provide training in the AC and PCC pavement field survey techniques. Engineering, Street Maintenance and GIS staff will have a clear understanding of how the system is developed and data recorded. City staff will be versed in the proper procedures for field data collection, thereby ensuring the ability of the City to repeat the pavement survey on its own when the need arises.

At the completion of the training, the City will be able to update each individual portions of the dataset as maintenance and future inspection are completed. The training will include:

- ❖ General MicroPAVER use
- ❖ Annual data entry needs, reporting requests and deterioration modeling
- ❖ Annual budget projection reports – PCI report generation
- ❖ Update of maintenance costs, strategy assignments, engineering data, and deterioration curves; interpretation and utilization of management reports)
- ❖ Querying, managing and plotting from PMP – GIS mapping

**Deliverable: Training materials used in workshops, field survey forms**

### **TASK 5.2: On-Call Services**

#### **Pavement Management Program Support**

*Bucknam* will provide annual support for a period of two years where we will provide quality and accurate use of the in-house operation of MicroPAVER software.



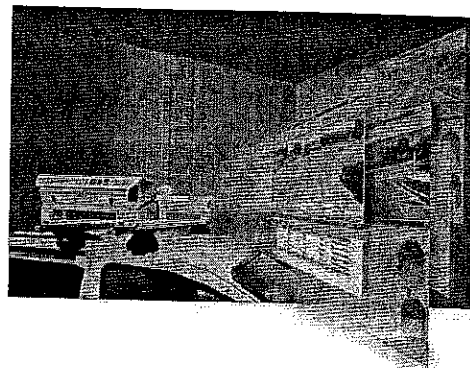
Once the City has approved the Pavement Condition Index Report under this years work effort, this service will become active. Our typical On-Call services include:

- ❖ Additional budget scenarios, general reporting, deterioration studies
- ❖ Additional visual inspections above the mileage amount indicated in Task 4.1
- ❖ Additional pavement management – GIS mapping
- ❖ Additional MicroPAVER training, operation use
- ❖ GIS Enterprise assessment, management, implementation

The agreement will to include the provision of onsite and telephone support for the City staff.

## ***TASK 5.3: Automated Digital Roadway Imaging***

Bucknam has performed numerous digital roadway imaging survey throughout Southern California over the past ten years. Based on the City's infrastructure / GIS data collection priorities we have performed digital imaging surveys for local agencies that compliment our pavement inspections. Our services are a proactive and cost efficient GPS survey methodology that will allow for the collection of numerous GPS locations using "one" set of digital imagery (e.g. five citywide infrastructure surveys for the cost of one).



**Beyond the pavement survey capabilities, the City will be able to collect other infrastructure assets in the future such as signs, manholes, driveways, catch basins and other ROW features; a tremendous costs savings that could reach \$400,000 over the next 3 years.**

**Several of our current clients have used this technology to include sign inventories with the pavement management survey in order to remain proactive with regulatory sign inspections.**

With verification of street segmentation, the inspection of approximately 77 centerline miles will be surveyed (or citywide). MicroPAVER - Army Corp of Engineers AC and PCC distress types will be collected based upon actual surface conditions and physical characteristics of the segment while being flexible to current City practices.

Our automated digital imaging allows technician to collect the following:

- Continuous pavement imaging (images taken every 5 meters, competition typically surveys at every 8 meters/25 feet intervals)
- Surface roughness ratings (IRI)
- Rutting depth (full width of lane or street)
- Imaging captures 100% of each pavement segment (not just one lane)

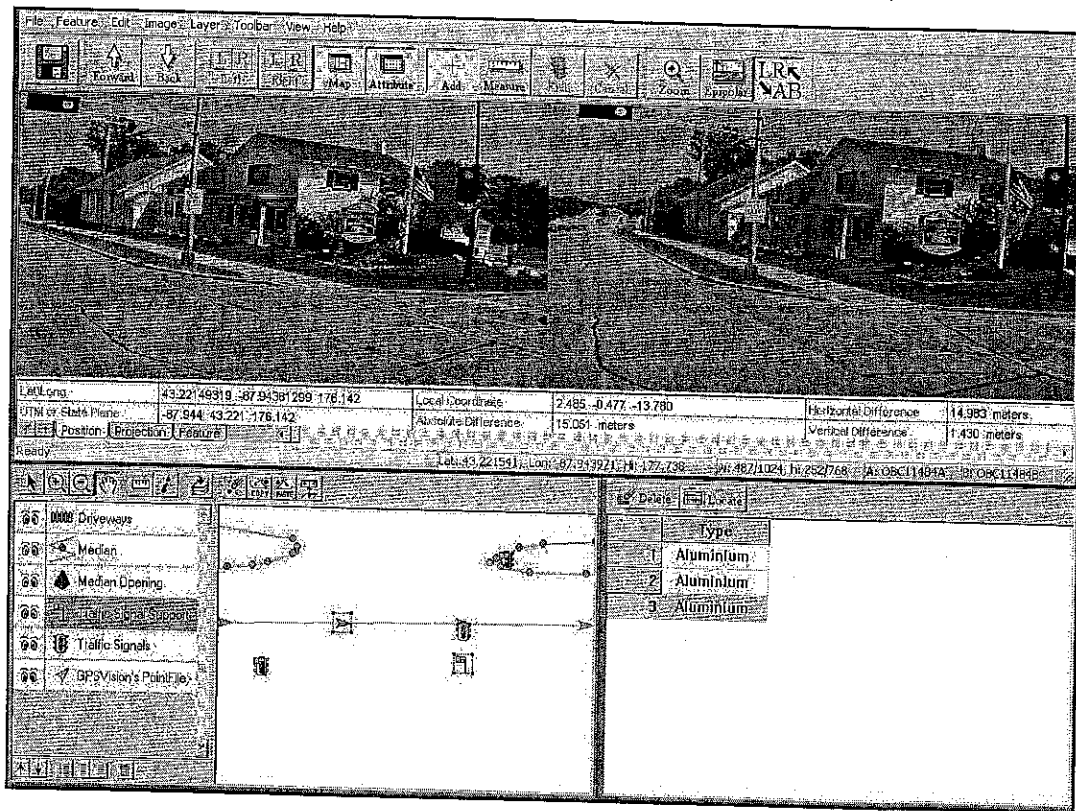
# Project Understanding / Scope of Work



- Data transfers seamlessly to MicroPAVER
- Optional Ground Penetrating Radar (GPR) for arterials and collectors
- 2mm pixel images allows for centimeter horizontal and vertical accuracy

The first survey process will involve the mobile GPS vehicle taking approximately three-week's time to survey the Costa Mesa's street network; additionally, the vehicles drive the posted speed limits. The images that are collected are taken by using Sony digital stereographic cameras (6 cameras) positioned on the vehicle. The images have a resolution of 1600x1200 and are geo-referenced by means of inertial GPS equipment contained within the van; images are taken every 4 to 6 meters, 15 ft intervals.

The quality of the imagery and its GIS / record collecting capabilities within the software provided allows the technician to accurately identify the required pavement distresses defined by the pavement software and the project (distresses are collected in-house).



All pavement GIS data associated with each pavement section will be entered into the City's working infrastructure and GIS software.

Survey vehicles are equipped with digital measuring instrumentation (DMI) that will be used to verify all pavement section lengths and widths. Our vehicles can be equipped with road roughness rating equipment, strip mapping cameras and are set to record 360 degree street imaging.



# Project Understanding / Scope of Work



The survey will be performed by the *Bucknam* team that is experienced and trained in infrastructure condition assessment using LambdaTech's "Feature Extraction" software. We have performed this service for the cities of Fountain Valley, RSM, Cypress, Lake Elsinore, National City, Palmdale, Palm Desert, La Habra Heights, Lomita and Santa Ana).

Through these projects we have collected the following infrastructure data sets and established GIS layering for:

- Sign Inventory (MUTCD compliant)
- Catch Basins
- Sewer and Storm Drain manholes
- Fire Hydrants
- Sidewalk Curb Markings
- Street Striping, Legends, Crosswalks
- Street Lighting
- Pavement roughness and rutting
- Pavement Management surveys (based on County requirements)

**EXHIBIT B**  
**FEE SCHEDULE**

# Project Understanding / Scope of Work



## Proposed Fee

Task Items 1 through 4 can be accomplished on a **time and materials not to exceed** basis in accordance with the standard hourly rate schedule attached. Our anticipated fee including labor and reimbursable expenses is projected to be \$20,820 for a three-month period. Should the City desire to increase the service level above the hours outlined above for the Task items 1 through 4 or require other services not described herein, a fee adjustment would be negotiated and mutually agreed upon by both parties. We have included our fee schedule below for the City consideration.

	Description	Principal	Project Manager	Assistant Planner	Field Technician(s)	Admin	Total by Task
	<b>2013 Base Fee</b>	\$250/hr	\$170/hr	\$125/hr	\$82/hr	\$75/hr	
<b>Task 1</b>	<b>Project Implementation</b>						
Task 1.1	Project Kickoff		2	1			\$465
Task 1.2	Project Status Meetings - Quality Control	1	3	3	8		\$1,791
<b>Task 2</b>	<b>Client Satisfaction</b>						
Task 2.1	Project Deliverables		4	4			\$1,180
<b>Task 3</b>	<b>Project Schedule</b>						
Task 3.1	Work Flow / Project Schedule		2	4			\$840
<b>Task 4</b>	<b>Scope of Work</b>						
Task 4.1	Update Maintenance and Rehabilitation Activities		1	1	6		\$787
Task 4.2	Pavement Condition Survey (77 miles-Windshield)		3	8	88		\$8,726
Task 4.3	Maintenace & CIP / Budgetary Analysis		4				\$680
Task 4.4	OCTA Compliance Reports / Citywide CIP Report	1	18	2		1	\$3,635
Task 4.5	Mapping and GIS Update		2	10	3		\$1,836
	Reimbursables (mileage, printing, materials)						\$880
	All deliverables will become property of the City of Costa Mesa						
	All Tasks are negotiable						
	<b>Total Hours per Staff</b>	2	39	33	105	1	
	<b>2013 Total Base Fee</b>	\$ 500	\$ 6,630	\$ 4,125	\$ 8,610	\$ 75	<b>\$20,820</b>
	<b>Optional Tasks</b>						
Task 5.1	Pavement Field & Software Training		12				\$2,040
Task 5.2	On-Call Services (Annual)						T&M
Task 5.3	Automated Digital Roadway Imaging (Citywide)						T&D
Additional services outside of this contract will be negotiated with the City where we will use the Standard Hourly Rate Schedule.							

**EXHIBIT C**  
**PROJECT SCHEDULE**

## ***Project Schedule***

- Project Kickoff – December 3, 2012
- Survey Completion – March 15, 2013
- Delivery of draft PMP – March 29, 2013
- City comments returned to Consultant – April, 2013
- Submittal to OCTA of MicroPAVER Certification conforming to Renewed Measure M2 Eligibility Guidelines – June 4, 2013
- Delivery of City CIP Final Report – June 4, 2013
  - All necessary OCTA data, reporting and revenue projections will be submitted prior to June 28, 2013
  - Costa Mesa CIP data/Final Report, reporting and revenue projections will be submitted by June, 2013
- Implementation of MicroPAVER version 6.5.2 – Any time after acceptance of Final PMP
  - Necessary MicroPAVER database will be delivered (.e65 format)
  - All pavement and GIS data pertinent to the project deliverables will be submitted with the Final PMP report, June 2013

**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.

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/21/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(jes) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: Willis Insurance Services of California Inc License#0371719 18101 Von Karman Ave Suite 600 Irvine, CA 92612
CONTACT NAME:
PHONE (A/C, No, Ext): 949 885-1200 FAX (A/C, No): 949-885-1225
INSURER(S) AFFORDING COVERAGE: INSURER A: Travelers Property Cas Co Ameri 25674 INSURER B: Continental Casualty Company 20443

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR INSR, WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Includes rows for General Liability, Automobile Liability, Umbrella Liab, Workers Compensation, and Professional Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Ref: OCTA PMP
City of Costa Mesa is named Additional Insured with respects to General Liability and Insurance is PRIMARY
Non Contributory per attached.

CERTIFICATE HOLDER: City of Costa Mesa Attn: Fariba Fazeli PE, Interim City Engineer 77 Fair Drive Costa Mesa, CA 92628
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BLANKET ADDITIONAL INSURED  
(ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:  
**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. The following is added to WHO IS AN INSURED (Section II):**

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF INSURANCE (Section III)** for this Coverage Part.

**B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

**C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

injury" or "property damage" occurs, or the "personal injury" offense is committed.

- D. The following definition is added to **DEFINITIONS (Section V)**:

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the

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"personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.