

AGREEMENT

33289

THIS AGREEMENT is made and entered, in duplicate, as of September 18, 2013, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on September 17, 2013, by and between IMS INFRASTRUCTURE MANAGEMENT SERVICES, LLC, an Arizona limited liability company ("Consultant"), with a place of business at 1820 W. Drake Drive, Suite 108, Tempe, Arizona 85283, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with engineering consulting services for the development of the City's pavement maintenance and management system ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Consultant perform these specialized services, and Consultant is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed Six Hundred Thirty One Thousand Two Hundred Ninety-Three Dollars (\$631,293), at the rates or charges shown in Exhibit "B".

1 B. Consultant may select the time and place of performance for  
2 these services; provided, however, that access to City documents, records and the  
3 like, if needed by Consultant, shall be available only during City's normal business  
4 hours and provided that milestones for performance, if any, are met.

5 C. Consultant has requested to receive regular payments. City  
6 shall pay Consultant in due course of payments following receipt from Consultant  
7 and approval by City of invoices showing the services or task performed, the time  
8 expended (if billing is hourly), and the name of the Project. Consultant shall certify  
9 on the invoices that Consultant has performed the services in full conformance  
10 with this Agreement and is entitled to receive payment. Each invoice shall be  
11 accompanied by a progress report indicating the progress to date of services  
12 performed and covered by the invoice, including a brief statement of any Project  
13 problems and potential causes of delay in performance, and listing those services  
14 that are projected for performance by Consultant during the next invoice cycle.  
15 Where billing is done and payment is made on an hourly basis, the parties  
16 acknowledge that this arrangement is either customary practice for Consultant's  
17 profession, industry or business, or is necessary to satisfy audit and legal  
18 requirements which may arise due to the fact that City is a municipality.

19 D. Consultant represents that Consultant has obtained all  
20 necessary information on conditions and circumstances that may affect its  
21 performance and has conducted site visits, if necessary.

22 E. CAUTION: Consultant shall not begin work until this  
23 Agreement has been signed by both parties and until Consultant's evidence of  
24 insurance has been delivered to and approved by City.

25 2. TERM. The term of this Agreement shall commence at midnight on  
26 October 1, 2013, and shall terminate at 11:59 p.m. on October 1, 2014, unless sooner  
27 terminated as provided in this Agreement, or unless the services or the Project is  
28 completed sooner.

1                   3.     COORDINATION AND ORGANIZATION.

2                   A.     Consultant shall coordinate its performance with City's  
3     representative, if any, named in Exhibit "C", attached to this Agreement and  
4     incorporated by this reference. Consultant shall advise and inform City's  
5     representative of the work in progress on the Project in sufficient detail so as to  
6     assist City's representative in making presentations and in holding meetings on  
7     the Project. City shall furnish to Consultant information or materials, if any,  
8     described in Exhibit "D", attached to this Agreement and incorporated by this  
9     reference, and shall perform any other tasks described in the Exhibit.

10                  B.     The parties acknowledge that a substantial inducement to City  
11     for entering this Agreement was and is the reputation and skill of Consultant's key  
12     employee, Stephen J. Smith. City shall have the right to approve any person  
13     proposed by Consultant to replace that key employee.

14                  4.     INDEPENDENT CONTRACTOR. In performing its services,  
15     Consultant is and shall act as an independent contractor and not an employee,  
16     representative or agent of City. Consultant shall have control of Consultant's work and  
17     the manner in which it is performed. Consultant shall be free to contract for similar  
18     services to be performed for others during this Agreement; provided, however, that  
19     Consultant acts in accordance with Section 9 and Section 11 of this Agreement.  
20     Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from  
21     Consultant's compensation; (b) City will not secure workers' compensation or pay  
22     unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide  
23     and Consultant is not entitled to any of the usual and customary rights, benefits or  
24     privileges of City employees. Consultant expressly warrants that neither Consultant nor  
25     any of Consultant's employees or agents shall represent themselves to be employees or  
26     agents of City.

27                  5.     INSURANCE.

28                  A.     As a condition precedent to the effectiveness of this

1 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
2 duration of this Agreement, from insurance companies that are admitted to write  
3 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
4 Company or from authorized non-admitted insurance companies subject to  
5 Section 1763 of the California Insurance Code and that have ratings of or  
6 equivalent to A:VIII by A.M. Best Company, the following insurance:

7 (a) Commercial general liability insurance (equivalent in scope to  
8 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than  
9 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This  
10 coverage shall include but not be limited to broad form contractual liability,  
11 cross liability, independent contractors liability, and products and  
12 completed operations liability. City, its boards and commissions, and their  
13 officials, employees and agents shall be named as additional insureds by  
14 endorsement (on City's endorsement form or on an endorsement  
15 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or  
16 both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and  
17 CG 20 37 07 04), and this insurance shall contain no special limitations on  
18 the scope of protection given to City, its boards and commissions, and  
19 their officials, employees and agents. This policy shall be endorsed to  
20 state that the insurer waives its right of subrogation against City, its boards  
21 and commissions, and their officials, employees and agents.

22 (b) Workers' Compensation insurance as required by the California  
23 Labor Code and employer's liability insurance in an amount not less than  
24 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
25 its right of subrogation against City, its boards and commissions, and their  
26 officials, employees and agents.

27 (c) Professional liability or errors and omissions insurance in an  
28 amount not less than \$1,000,000 per claim.

1 (d) Commercial automobile liability insurance (equivalent in scope  
2 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an  
3 amount not less than \$500,000 combined single limit per accident.

4 B. Any self-insurance program, self-insured retention, or  
5 deductible must be separately approved in writing by City's Risk Manager or  
6 designee and shall protect City, its officials, employees and agents in the same  
7 manner and to the same extent as they would have been protected had the policy  
8 or policies not contained retention or deductible provisions.

9 C. Each insurance policy shall be endorsed to state that  
10 coverage shall not be reduced, non-renewed or canceled except after thirty (30)  
11 days prior written notice to City, shall be primary and not contributing to any other  
12 insurance or self-insurance maintained by City, and shall be endorsed to state that  
13 coverage maintained by City shall be excess to and shall not contribute to  
14 insurance or self-insurance maintained by Consultant. Consultant shall notify City  
15 in writing within five (5) days after any insurance has been voided by the insurer or  
16 cancelled by the insured.

17 D. If this coverage is written on a "claims made" basis, it must  
18 provide for an extended reporting period of not less than one hundred eighty (180)  
19 days, commencing on the date this Agreement expires or is terminated, unless  
20 Consultant guarantees that Consultant will provide to City evidence of  
21 uninterrupted, continuing coverage for a period of not less than three (3) years,  
22 commencing on the date this Agreement expires or is terminated.

23 E. Consultant shall require that all subconsultants or contractors  
24 that Consultant uses in the performance of these services maintain insurance in  
25 compliance with this Section unless otherwise agreed in writing by City's Risk  
26 Manager or designee.

27 F. Prior to the start of performance, Consultant shall deliver to  
28 City certificates of insurance and the endorsements for approval as to sufficiency

1 and form. In addition, Consultant shall, within thirty (30) days prior to expiration of  
2 the insurance, furnish to City certificates of insurance and endorsements  
3 evidencing renewal of the insurance. City reserves the right to require complete  
4 certified copies of all policies of Consultant and Consultant's subconsultants and  
5 contractors, at any time. Consultant shall make available to City's Risk Manager  
6 or designee all books, records and other information relating to this insurance,  
7 during normal business hours.

8 G. Any modification or waiver of these insurance requirements  
9 shall only be made with the approval of City's Risk Manager or designee. Not  
10 more frequently than once a year, City's Risk Manager or designee may require  
11 that Consultant, Consultant's subconsultants and contractors change the amount,  
12 scope or types of coverages required in this Section if, in his or her sole opinion,  
13 the amount, scope or types of coverages are not adequate.

14 H. The procuring or existence of insurance shall not be  
15 construed or deemed as a limitation on liability relating to Consultant's  
16 performance or as full performance of or compliance with the indemnification  
17 provisions of this Agreement.

18 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
19 contemplates the personal services of Consultant and Consultant's employees, and the  
20 parties acknowledge that a substantial inducement to City for entering this Agreement  
21 was and is the professional reputation and competence of Consultant and Consultant's  
22 employees. Consultant shall not assign its rights or delegate its duties under this  
23 Agreement, or any interest in this Agreement, or any portion of it, without the prior  
24 approval of City, except that Consultant may with the prior approval of the City Manager  
25 of City, assign any moneys due or to become due Consultant under this Agreement. Any  
26 attempted assignment or delegation shall be void, and any assignee or delegate shall  
27 acquire no right or interest by reason of an attempted assignment or delegation.  
28 Furthermore, Consultant shall not subcontract any portion of its performance without the

1 prior approval of the City Manager or designee, or substitute an approved subconsultant  
2 or contractor without approval prior to the substitution. Nothing stated in this Section  
3 shall prevent Consultant from employing as many employees as Consultant deems  
4 necessary for performance of this Agreement.

5 7. CONFLICT OF INTEREST. Consultant, by executing this  
6 Agreement, certifies that, at the time Consultant executes this Agreement and for its  
7 duration, Consultant does not and will not perform services for any other client which  
8 would create a conflict, whether monetary or otherwise, as between the interests of City  
9 and the interests of that other client. And, Consultant shall obtain similar certifications  
10 from Consultant's employees, subconsultants and contractors.

11 8. MATERIALS. Consultant shall furnish all labor and supervision,  
12 supplies, materials, tools, machinery, equipment, appliances, transportation and services  
13 necessary to or used in the performance of Consultant's obligations under this  
14 Agreement, except as stated in Exhibit "D".

15 9. OWNERSHIP OF DATA. All materials, information and data  
16 prepared, developed or assembled by Consultant or furnished to Consultant in  
17 connection with this Agreement, including but not limited to documents, estimates,  
18 calculations, studies, maps, graphs, charts, computer disks, computer source  
19 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,  
20 information, material and memorandum ("Data") shall be the exclusive property of City.  
21 Data shall be given to City, and City shall have the unrestricted right to use and disclose  
22 the Data in any manner and for any purpose without payment of further compensation to  
23 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that  
24 Data shall not be made available to any person or entity for use without the prior approval  
25 of City. This warranty shall survive termination of this Agreement for five (5) years.

26 10. TERMINATION. Either party shall have the right to terminate this  
27 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
28 prior notice to the other party. In the event of termination under this Section, City shall

1 pay Consultant for services satisfactorily performed and costs incurred up to the effective  
2 date of termination for which Consultant has not been previously paid. The procedures  
3 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of  
4 termination, Consultant shall deliver to City all Data developed or accumulated in the  
5 performance of this Agreement, whether in draft or final form, or in process. And,  
6 Consultant acknowledges and agrees that City's obligation to make final payment is  
7 conditioned on Consultant's delivery of the Data to City.

8 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and  
9 shall not disclose the Data or use the Data directly or indirectly, other than in the course  
10 of performing its services, during the term of this Agreement and for five (5) years  
11 following expiration or termination of this Agreement. In addition, Consultant shall keep  
12 confidential all information, whether written, oral or visual, obtained by any means  
13 whatsoever in the course of performing its services for the same period of time.  
14 Consultant shall not disclose any or all of the Data to any third party, or use it for  
15 Consultant's own benefit or the benefit of others except for the purpose of this  
16 Agreement.

17 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
18 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates  
19 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available  
20 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
21 disclose does so to Consultant without restrictions on further disclosure; or (d) must be  
22 disclosed pursuant to subpoena or court order.

23 13. ADDITIONAL COSTS AND REDESIGN.

24 A. Any costs incurred by City due to Consultant's failure to meet  
25 the standards required by the scope of work or Consultant's failure to perform fully  
26 the tasks described in the scope of work which, in either case, causes City to  
27 request that Consultant perform again all or part of the Scope of Work shall be at  
28 the sole cost of Consultant and City shall not pay any additional compensation to



1 Consultant for its re-performance.

2 B. If the Project involves construction and the scope of work  
3 requires Consultant to prepare plans and specifications with an estimate of the  
4 cost of construction, then Consultant may be required to modify the plans and  
5 specifications, any construction documents relating to the plans and specifications,  
6 and Consultant's estimate, at no cost to City, when the lowest bid for construction  
7 received by City exceeds by more than ten percent (10%) Consultant's estimate.  
8 This modification shall be submitted in a timely fashion to allow City to receive new  
9 bids within four (4) months after the date on which the original plans and  
10 specifications were submitted by Consultant.

11 14. AMENDMENT. This Agreement, including all Exhibits, shall not be  
12 amended, nor any provision or breach waived, except in writing signed by the parties  
13 which expressly refers to this Agreement.

14 15. LAW. This Agreement shall be construed in accordance with the  
15 laws of the State of California, and the venue for any legal actions brought by any party  
16 with respect to this Agreement shall be the County of Los Angeles, State of California for  
17 state actions and the Central District of California for any federal actions. Consultant  
18 shall cause all work performed in connection with construction of the Project to be  
19 performed in compliance with (1) all applicable laws, ordinances, rules and regulations of  
20 federal, state, county or municipal governments or agencies (including, without limitation,  
21 all applicable federal and state labor standards, including the prevailing wage provisions  
22 of sections 1770 *et seq.* of the California Labor Code); and (2) all directions, rules and  
23 regulations of any fire marshal, health officer, building inspector, or other officer of every  
24 governmental agency now having or hereafter acquiring jurisdiction.

25 16. PREVAILING WAGES.

26 A. Consultant agrees that all public work (as defined in California  
27 Labor Code section 1720) performed pursuant to this Agreement (the "Public  
28 Work"), if any, shall comply with the requirements of California Labor Code

1 sections 1770 *et seq.* City makes no representation or statement that the Project,  
2 or any portion thereof, is or is not a "public work" as defined in California Labor  
3 Code section 1720.

4 B. In all bid specifications, contracts and subcontracts for any  
5 such Public Work, Consultant shall obtain the general prevailing rate of per diem  
6 wages and the general prevailing rate for holiday and overtime work in this locality  
7 for each craft, classification or type of worker needed to perform the Public Work,  
8 and shall include such rates in the bid specifications, contract or subcontract.  
9 Such bid specifications, contract or subcontract must contain the following  
10 provision: "It shall be mandatory for the contractor to pay not less than the said  
11 prevailing rate of wages to all workers employed by the contractor in the execution  
12 of this contract. The contractor expressly agrees to comply with the penalty  
13 provisions of California Labor Code section 1775 and the payroll record keeping  
14 requirements of California Labor Code section 1771."

15 17. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
16 constitutes the entire understanding between the parties and supersedes all other  
17 agreements, oral or written, with respect to the subject matter in this Agreement.

18 18. INDEMNITY.

19 A. Consultant shall indemnify, protect and hold harmless City, its  
20 Boards, Commissions, and their officials, employees and agents ("Indemnified  
21 Parties"), from and against any and all liability, claims, demands, damage, loss,  
22 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
23 costs and expenses, including attorneys' fees, court costs, expert and witness  
24 fees, and other costs and fees of litigation, arising or alleged to have arisen, in  
25 whole or in part, out of or in connection with (1) Consultant's breach or failure to  
26 comply with any of its obligations contained in this Agreement, including any  
27 obligations arising from the Project's compliance with or failure to comply with  
28 applicable laws, including all applicable federal and state labor requirements

1 including, without limitation, the requirements of California Labor Code section  
2 1770 *et seq.* or (2) negligent or willful acts, errors, omissions or misrepresentations  
3 committed by Consultant, its officers, employees, agents, subcontractors, or  
4 anyone under Consultant's control, in the performance of work or services under  
5 this Agreement (collectively "Claims" or individually "Claim").

6 B. In addition to Consultant's duty to indemnify, Consultant shall  
7 have a separate and wholly independent duty to defend Indemnified Parties at  
8 Consultant's expense by legal counsel approved by City, from and against all  
9 Claims, and shall continue this defense until the Claims are resolved, whether by  
10 settlement, judgment or otherwise. No finding or judgment of negligence, fault,  
11 breach, or the like on the part of Consultant shall be required for the duty to defend  
12 to arise. City shall notify Consultant of any Claim, shall tender the defense of the  
13 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,  
14 in the defense.

15 C. If a court of competent jurisdiction determines that a Claim  
16 was caused by the sole negligence or willful misconduct of Indemnified Parties,  
17 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the  
18 court determines sole negligence by the Indemnified Parties, or (2) reduced by the  
19 percentage of willful misconduct attributed by the court to the Indemnified Parties.

20 D. The provisions of this Section shall survive the expiration or  
21 termination of this Agreement.

22 19. AMBIGUITY. In the event of any conflict or ambiguity between this  
23 Agreement and any Exhibit, the provisions of this Agreement shall govern.

24 20. NONDISCRIMINATION.

25 A. In connection with performance of this Agreement and subject  
26 to applicable rules and regulations, Consultant shall not discriminate against any  
27 employee or applicant for employment because of race, religion, national origin,  
28 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or

1 disability. Consultant shall ensure that applicants are employed, and that  
2 employees are treated during their employment, without regard to these bases.  
3 These actions shall include, but not be limited to, the following: employment,  
4 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or  
5 termination; rates of pay or other forms of compensation; and selection for training,  
6 including apprenticeship.

7 B. It is the policy of City to encourage the participation of  
8 Disadvantaged, Minority and Women-Owned Business Enterprises in City's  
9 procurement process, and Consultant agrees to use its best efforts to carry out  
10 this policy in its use of subconsultants and contractors to the fullest extent  
11 consistent with the efficient performance of this Agreement. Consultant may rely  
12 on written representations by subconsultants and contractors regarding their  
13 status. Consultant shall report to City in May and in December or, in the case of  
14 short-term agreements, prior to invoicing for final payment, the names of all  
15 subconsultants and contractors hired by Consultant for this Project and information  
16 on whether or not they are a Disadvantaged, Minority or Women-Owned Business  
17 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.  
18 637).

19 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
20 accordance with the provisions of the Ordinance, this Agreement is subject to the  
21 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
22 Long Beach Municipal Code, as amended from time to time.

23 A. During the performance of this Agreement, the Consultant  
24 certifies and represents that the Consultant will comply with the EBO. The  
25 Consultant agrees to post the following statement in conspicuous places at its  
26 place of business available to employees and applicants for employment:

27 "During the performance of a contract with the City of Long Beach,  
28 the Consultant will provide equal benefits to employees with spouses and its

1 employees with domestic partners. Additional information about the City of  
2 Long Beach's Equal Benefits Ordinance may be obtained from the City of  
3 Long Beach Business Services Division at 562-570-6200."

4 B. The failure of the Consultant to comply with the EBO will be  
5 deemed to be a material breach of the Agreement by the City.

6 C. If the Consultant fails to comply with the EBO, the City may  
7 cancel, terminate or suspend the Agreement, in whole or in part, and monies due  
8 or to become due under the Agreement may be retained by the City. The City  
9 may also pursue any and all other remedies at law or in equity for any breach.

10 D. Failure to comply with the EBO may be used as evidence  
11 against the Consultant in actions taken pursuant to the provisions of Long Beach  
12 Municipal Code 2.93 et seq., Contractor Responsibility.

13 E. If the City determines that the Consultant has set up or used  
14 its contracting entity for the purpose of evading the intent of the EBO, the City may  
15 terminate the Agreement on behalf of the City. Violation of this provision may be  
16 used as evidence against the Consultant in actions taken pursuant to the  
17 provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor  
18 Responsibility.

19 22. NOTICES. Any notice or approval required by this Agreement shall  
20 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
21 postage prepaid, addressed to Consultant at the address first stated above, and to City at  
22 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a  
23 copy to the City Engineer at the same address. Notice of change of address shall be  
24 given in the same manner as stated for other notices. Notice shall be deemed given on  
25 the date deposited in the mail or on the date personal delivery is made, whichever occurs  
26 first.

27 23. COPYRIGHTS AND PATENT RIGHTS.

28 A. Consultant shall place the following copyright protection on all

1 Data: © City of Long Beach, California \_\_\_\_, inserting the appropriate year.

2 B. City reserves the exclusive right to seek and obtain a patent  
3 or copyright registration on any Data or other result arising from Consultant's  
4 performance of this Agreement. By executing this Agreement, Consultant assigns  
5 any ownership interest Consultant may have in the Data to City.

6 C. Consultant warrants that the Data does not violate or infringe  
7 any patent, copyright, trade secret or other proprietary right of any other party.  
8 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials  
9 and employees harmless from any and all claims, demands, damages, loss,  
10 liability, causes of action, costs or expenses (including reasonable attorney's fees)  
11 whether or not reduced to judgment, arising from any breach or alleged breach of  
12 this warranty.

13 24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants  
14 that Consultant has not employed or retained any entity or person to solicit or obtain this  
15 Agreement and that Consultant has not paid or agreed to pay any entity or person any  
16 fee, commission or other monies based on or from the award of this Agreement. If  
17 Consultant breaches this warranty, City shall have the right to terminate this Agreement  
18 immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct  
19 from payments due under this Agreement or otherwise recover the full amount of the fee,  
20 commission or other monies.

21 25. WAIVER. The acceptance of any services or the payment of any  
22 money by City shall not operate as a waiver of any provision of this Agreement or of any  
23 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
24 Agreement shall not constitute a waiver of any other or subsequent breach of this  
25 Agreement.

26 26. CONTINUATION. Termination or expiration of this Agreement shall  
27 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
28 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

1           27.   TAX REPORTING. As required by federal and state law, City is  
2 obligated to and will report the payment of compensation to Consultant on Form 1099-  
3 Misc. Consultant shall be solely responsible for payment of all federal and state taxes  
4 resulting from payments under this Agreement. Consultant shall submit Consultant's  
5 Employer Identification Number (EIN), or Consultant's Social Security Number if  
6 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of  
7 Financial Management. Consultant acknowledges and agrees that City has no obligation  
8 to pay Consultant until Consultant provides one of these numbers.

9           28.   ADVERTISING. Consultant shall not use the name of City, its  
10 officials or employees in any advertising or solicitation for business or as a reference,  
11 without the prior approval of the City Manager or designee.

12           29.   AUDIT. City shall have the right at all reasonable times during the  
13 term of this Agreement and for a period of five (5) years after termination or expiration of  
14 this Agreement to examine, audit, inspect, review, extract information from and copy all  
15 books, records, accounts and other documents of Consultant relating to this Agreement.

16           30.   THIRD PARTY BENEFICIARY. This Agreement is not intended or  
17 designed to or entered for the purpose of creating any benefit or right for any person or  
18 entity of any kind that is not a party to this Agreement.

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OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 IN WITNESS WHEREOF, the parties have caused this document to be duly  
2 executed with all formalities required by law as of the date first stated above.

3 IMS INFRASTRUCTURE MANAGEMENT  
4 SERVICES, LLC, an Arizona limited  
liability company

5 October 9,, 2013

By \_\_\_\_\_  
6 Name Alan Sadowsky  
7 Title Member/Manager

8 October 9,, 2013

By \_\_\_\_\_  
9 Name Stephen Smith  
10 Title Member/Manager

"Consultant"

11 CITY OF LONG BEACH, a municipal  
12 corporation

13 11.5, 2013

By \_\_\_\_\_ Assistant City Manager  
City Manager

"City"

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

15 This Agreement is approved as to form on 10/24, 2013.

17 CHARLES PARKIN, City Attorney

18 By \_\_\_\_\_ Deputy  
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# **EXHIBIT A**

## **Scope of Work**

City of Long Beach - Department of Public Works  
Work Scope Deliverables and Milestones for  
Pavement Management Program (PMP) Utilizing Automated Condition Surveying

Item No.	Task No.	Pt.	Task Summary Descriptions	Proposed		Required Deliverables	Task Weight (%) **	Deliverable Weight (%)***	Footnotes and Comments
				Start Date *	Finish Date *				
1	0	1	Narrative Project Description and Schedule			Preliminary Project Description and Schedule, responses to comments, and Final Project Description and Schedule	30%		1, 4
2	0	2	QA/QC Plan			Preliminary QA/QC Plan, responses to comments, and Final QA/QC Plan	30%		1, 4
3	0	3	QA/QC Plan			QA/QC'd Final QA/QC Plan	20%		1, 4
4	0	4	Narrative Project Description and Schedule			QA/QC'd data files for Final Project Description and Schedule	10%		1, 4
5	0	5	QA/QC Plan			QA/QC'd data files for Final QA/QC Plan	10%		1, 4
6			Subtotal for Task 0				100%		2, 3
7	1	1	Investigations and Network Definition			QA/QC'd GIS Network Map with: City Boundary; Significant Roadways; Harbor District Boundary; Long Beach Airport Boundary; and nine Council District Boundaries	33%		1, 4
8	1	2	Investigations and Network Definition			QA/QC'd MicroPAVER Network Data Table with: item reference numbers; GIS Section reference numbers; Street Segment Names, From and To references, Lengths, and Widths; Pavement Types and Areas; and City Council District Numbers	40%		1, 4
9	1	3	Investigations and Network Definition			QA/QC'd Roadway Network Figure	10%		1, 4
10	1	4	Investigations and Network Definition			QA/QC'd GIS data files for Task 1.1	10%		1, 4
11	1	5	Investigations and Network Definition			QA/QC'd MicroPAVER data files for Task 1.2	5%		1, 4
12	1	6	Investigations and Network Definition			QA/QC'd electronic data files for Task 1.3	2%		1, 4
13			Subtotal for Task 1				100%		2, 3
14	2	1	Network Classifications			QA/QC'd GIS Classification Map with: all items of Task 1.1; Freeways; Major Arterials; Secondary Arterials; Collector Streets; Bus Routes; Local Streets; and Alleys	33%		1, 4
15	2	2	Network Classifications			QA/QC'd MicroPAVER Network Data Table with: all items of Task 1.2; and roadway Classifications per street segment	40%		1, 4
16	2	3	Network Classifications			QA/QC'd Roadway Functional Classification Figure	10%		1, 4
17	2	4	Network Classifications			QA/QC'd GIS data files for Task 2.1	10%		1, 4
18	2	5	Network Classifications			QA/QC'd MicroPAVER data files for Task 2.2	5%		1, 4
19	2	6	Network Classifications			QA/QC'd electronic data files for Task 2.3	2%		1, 4
20			Subtotal for Task 2				100%		2, 3
21	3	1	Pavement Condition Survey			QA/QC'd Inventory data table of the City's entire street network and all items of Task 2.1.	5%		1, 4
22	3	2	Pavement Condition Survey			QA/QC'd Routing Plan for Automated Data Collection - Prior to performing the survey of the pavement sections, all street segments in the network are to be routed to ensure the most efficient way for the survey team to capture accurate pavement data. Routing must include consideration of night work and coordination with the City's street sweeping parking restrictions.	10%		1, 4
23	3	3	Pavement Condition Survey			QA/QC'd Automated Data Collection collected utilizing an automated van or other vehicle designed to collect pavement distress data. Typical equipment includes computerized work station(s), cameras to take digital images of the street surface, and lasers to capture roadway roughness and rutting data.	40%		1, 4

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Item No.	Task No.	Pt.	Task Summary Descriptions	Proposed		Required Deliverables	Task Weight (%) **	Deliverable Weight (%)***	Footnotes and Comments
				Start Date *	Finish Date *				
24	3	4	Pavement Condition Survey			QA/QC'd Data Processing of collected information that has been analyzed to determine type, quantity and severity of pavement surface distress.	10%		1.4
25	3	5	Pavement Condition Survey			QA/QC'd Pavement Condition Survey and Visual Condition Survey narrative with photographic images, data, and analysis required by the QA/QC Plan to ensure statistical reliability of automated collection data; responses to Staff's comments; and Draft Final Pavement Condition Survey and Visual Condition Survey Chapters for the PMP report.	10%		1.4
26	3	6	Pavement Condition Survey			QA/QC'd MicroPAVER Analysis of the processed pavement distress information analyzed by MicroPAVER to calculate the Pavement Condition Index (PCI) for the pavement. Life Cycle curves are to be developed and the critical PCI established using the critical PCI method.	10%		1.4
27	3	7	Pavement Condition Survey			QA/QC'd MicroPAVER Network data table with: all items of Task 1.2 and all items of Task 2.2.	5%		1.4
28	3	8	Pavement Condition Survey			QA/QC'd electronic data files for Task 3.5	5%		1.4
29	3	9	Pavement Condition Survey			QA/QC'd MicroPAVER data files for Task 3.6 and Task 3.7	5%		1.4
30			Subtotal for Task 3				100%		2.3
31	4	1	Current (2013) Pavement Condition			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting Current (2013) Pavement Condition information specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final Current (2013) Pavement Condition Chapters for the PMP report.	40%		1.4
32	4	2	Current (2013) Pavement Condition			QA/QC'd Current (2013) PCI Figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final Figures for the PMP report.	30%		1.4
33	4	3	Current (2013) Pavement Condition			QA/QC'd electronic data files for Task 4.1	10%		1.4
34	4	4	Current (2013) Pavement Condition			QA/QC'd electronic data files for Task 4.2	20%		1.4
35			Subtotal for Task 4				100%		2.3
36	5	1	General Pavement Trend			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting General Pavement Trend information specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final General Pavement Trend Chapters for the PMP report.	40%		1.4
37	5	2	General Pavement Trend			QA/QC'd General Pavement Trend graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final graphs, tables, charts, and figures for the PMP report.	30%		1.4
38	5	3	General Pavement Trend			QA/QC'd electronic data files for Task 5.1	10%		1.4

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Item No.	Task No.	Pt.	Task Summary Descriptions	Proposed		Required Deliverables	Task Weight (%) **	Deliverable Weight (%) ***	Footnotes and Comments
				Start Date *	Finish Date *				
39	5	4	General Pavement Trend			QA/QC'd electronic data files for Task 5.2	20%		1, 4
40			Subtotal for Task 5			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting Predicted PCI information specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Predicted PCI Chapters for the PMP report.	100%		2, 3
41	6	1	Predicted PCI			QA/QC'd Predicted PCI graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final graphs, tables, charts, and figures for the PMP report.	40%		1, 4
42	6	2	Predicted PCI			QA/QC'd Predicted PCI graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final graphs, tables, charts, and figures for the PMP report.	30%		1, 4
43	6	3	Predicted PCI			QA/QC'd electronic data files for Task 6.1	10%		1, 4
44	6	4	Predicted PCI			QA/QC'd electronic data files for Task 6.2	20%		1, 4
45			Subtotal for Task 6			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting Maintenance and Rehabilitation (M & R) Work Planning information specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Maintenance and Rehabilitation (M & R) Work Planning Chapters for the PMP report.	100%		2, 3
46	7	1	Maintenance and Rehabilitation (M & R) Work Planning			QA/QC'd Maintenance and Rehabilitation (M & R) Work Planning graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final Maintenance and Rehabilitation (M & R) Work Planning graphs, tables, charts, and figures for the PMP report.	40%		1, 4
47	7	2	Maintenance and Rehabilitation (M & R) Work Planning			QA/QC'd electronic data files for Task 7.1	30%		1, 4
48	7	3	Maintenance and Rehabilitation (M & R) Work Planning			QA/QC'd electronic data files for Task 7.2	10%		1, 4
49	7	4	Maintenance and Rehabilitation (M & R) Work Planning			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting Budget Analysis information specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final Budget Analysis Chapters for the PMP report.	20%		1, 4
50			Subtotal for Task 7			QA/QC'd electronic data files for Task 8.1	100%		2, 3
51	8	1	Budget Analysis			QA/QC'd Budget Analysis graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final Budget Analysis graphs, tables, charts, and figures for the PMP report.	40%		1, 4
52	8	2	Budget Analysis			QA/QC'd Budget Analysis graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final Budget Analysis graphs, tables, charts, and figures for the PMP report.	30%		1, 4
53	8	3	Budget Analysis			QA/QC'd electronic data files for Task 8.1	10%		1, 4

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Item No.	Task No.	Pt.	Task Summary Descriptions	Proposed		Required Deliverables	Task Weight (%) **	Deliverable Weight (%)***	Footnotes and Comments
				Start Date *	Finish Date *				
54	8	4	Budget Analysis			QA/QC'd electronic data files for Task 8.2	20%		1, 4
55			Subtotal for Task 8				100%		2, 3
56	9	1	Conclusions			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting Conclusions specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Conclusions Chapters for the PMP report.	40%		1, 4
57	9	2	Conclusions			QA/QC'd Conclusions graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final Conclusions graphs, tables, charts, and figures for the PMP report.	30%		1, 4
58	9	3	Conclusions			QA/QC'd electronic data files for Task 9.1	10%		1, 4
59	9	4	Conclusions			QA/QC'd electronic data files for Task 9.2	20%		1, 4
60			Subtotal for Task 9				100%		2, 3
61	10	1	Recommendations			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting Recommendations specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Recommendations Chapters for the PMP report.	40%		1, 4
62	10	2	Recommendations			QA/QC'd Recommendations graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final Recommendations graphs, tables, charts, and figures for the PMP report.	30%		1, 4
63	10	3	Recommendations			QA/QC'd electronic data files for Task 10.1	10%		1, 4
64	10	4	Recommendations			QA/QC'd electronic data files for Task 10.2	20%		1, 4
65			Subtotal for Task 10				100%		2, 3
66	11	1	Recommended Work Plan			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting Recommended Work Plan specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Recommended Work Plan Chapters for the PMP report.	40%		1, 4
67	11	2	Recommended Work Plan			QA/QC'd Recommended Work Plan graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Recommended Work Plan graphs, tables, charts, and figures for the PMP report.	30%		1, 4
68	11	3	Recommended Work Plan			QA/QC'd electronic data files for Task 11.1	10%		1, 4
69	11	4	Recommended Work Plan			QA/QC'd electronic data files for Task 11.2	20%		1, 4
70			Subtotal for Task 11				100%		2, 3

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Item No.	Task No.	Pl.	Task Summary Descriptions	Proposed		Required Deliverables	Task Weight (%)	Deliverable Weight (%)	Footnotes and Comments
				Start Date *	Finish Date *				
71	12	1	Project Level Rehabilitation Projects (Design Level)			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting Project Level Rehabilitation Projects (Design Level) information specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Project Level Rehabilitation Projects (Design Level) Chapters for the PMP report.	40%		1, 4
72	12	2	Project Level Rehabilitation Projects (Design Level)			QA/QC'd Project Level Rehabilitation Projects (Design Level) graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Conclusions graphs, tables, charts, and figures for the PMP report.	30%		1, 4
73	12	3	Project Level Rehabilitation Projects (Design Level)			QA/QC'd electronic data files for Task 12.1	10%		1, 4
74	12	4	Project Level Rehabilitation Projects (Design Level)			QA/QC'd electronic data files for Task 12.2	20%		1, 4
75			Subtotal for Task 12				100%		2, 3
76	13	1	Work and Construction Activities			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting Work and Construction Activities information specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Work and Construction Activities Chapters for the PMP report.	40%		1, 4
77	13	2	Work and Construction Activities			QA/QC'd Work and Construction Activities graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Work and Construction Activities graphs, tables, charts, and figures for the PMP report.	30%		1, 4
78	13	3	Work and Construction Activities			QA/QC'd electronic data files for Task 13.1	10%		1, 4
79	13	4	Work and Construction Activities			QA/QC'd electronic data files for Task 13.2	20%		1, 4
80			Subtotal for Task 13				100%		2, 3
81	14	1	Re-inspection of Pavements			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting Re-inspection of Pavements information specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Re-inspection of Pavements Chapters for the PMP report.	40%		1, 4
82	14	2	Re-inspection of Pavements			QA/QC'd Work and Construction Activities graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Re-inspection of Pavements graphs, tables, charts, and figures for the PMP report.	30%		1, 4
83	14	3	Re-inspection of Pavements			QA/QC'd electronic data files for Task 14.1	10%		1, 4
84	14	4	Re-inspection of Pavements			QA/QC'd electronic data files for Task 14.2	20%		1, 4

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Item No.	Task No.	Pt	Task Summary Descriptions	Proposed		Required Deliverables	Task		Footnotes and Comments
				Start Date *	Finish Date *		Weight (%) **	Deliverable Weight (%)***	
85			Subtotal for Task 14			QA/QC'd narrative discussions, descriptions, data, analysis, graphs, tables, charts, and figures presenting implementing a PMP information specific to each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Draft Final Implementing a PMP Chapters for the PMP report.	100%		2, 3
86	15	1	Implementing a PMP			QA/QC'd implementing a PMP graphs, tables, charts, and figures for each of the nine City Council Districts and city-wide Major Arterials, Secondary Arterials, and city-owned freeway; responses to Staff's comments; and Final implementing a PMP graphs, tables, charts, and figures for the PMP report.	40%		1, 4
87	15	2	Implementing a PMP			QA/QC'd electronic data files for Task 15.1	30%		1, 4
88	15	3	Implementing a PMP			QA/QC'd electronic data files for Task 15.2	10%		1, 4
89	15	4	Implementing a PMP				20%		1, 4
90			Subtotal for Task 15			QA/QC'd Final PMP report volumes and appendices compiled for all Task deliverables and assembled and bound for each of nine City Council Districts and City-wide for Major Arterials, Secondary Highways, and city-owned freeway; responses to Staff's comments; and presentation of Final PMP.	100%		2, 3
91	16	1	Final PMP report volumes and appendices			QA/QC'd Staff training manual and presentation materials regarding PMP processes and PMP implementation	55%		1, 4
92	16	2	Final PMP report volumes and appendices			Staff training of PMP processes and PMP implementation	20%		1, 4
93	16	3	Final PMP report volumes and appendices			QA/QC'd electronic data files for Task 16.1	10%		1, 4
94	16	4	Final PMP report volumes and appendices			QA/QC'd electronic data files for Task 16.2	10%		1, 4
95	16	5	Final PMP report volumes and appendices				5%		1, 4
96			Subtotal for Task 16				100%		2, 3
97			Total for all Tasks (0 - 16)						

Footnotes and Comments

- 1 Staff's peer review must result in acceptance of deliverables
- 2 Consultant may invoice for Task only upon Staff's approval of all Task deliverables
- 3 Final Weighted % for each Task will be based on final negotiated contract
- 4 Allow one week for Staff's review per Task submittal
- \* Proposers shall insert "Start" and "Finish" dates for all Tasks (MM/DD/YYYY)
- \*\* Task Weight % may be modified by Proposers
- \*\*\* Deliverable Weight % shall be entered by Proposers for all Tasks, subtotaled per Task, and Total 100%

# EXHIBIT “B”

## Rates or Charges



# Memorandum



IMS Infrastructure Management Services  
1820 W. Drake Drive, Suite 108 Tempe, AZ 85283  
Phone: (480) 839-4347 Fax: (480) 839-4348  
www.ims-rst.com

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<b>To:</b> Onofre Ramirez, P.E.	<b>Date:</b> 10/3/2013
Ara Maloyan, P.E.	<b>cc:</b> File
<b>From:</b> Stephen J. Smith, P.E., P.Eng.	<b>Project:</b> Long Beach, CA
<b>Subject:</b> Personnel Hourly Rates	<b>Project No:</b> 13313

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## HOURLY RATES AND IMS PERSONNEL

The chart below illustrates each personnel assigned to IMS, their hourly unit rates, and their assigned role. These rates were used to develop the project budget and may be used for additional time and materials work at the request of the City of Long Beach. The assigned hours and estimated expenses have been provided in the IMS fee schedule.

### Hourly Rates

Description		Unit Rate
Project Principal/Manager	S. Smith	135.00
Project Engineer III	D. Butler, M. Shaeffer	120.00
Project Engineer II	I. Sanchez	90.00
Project Engineer I	D. Bratton, R. Barkman	75.00
Staff Professional III	A. Sadowky, Z. Thomason	100.00
Staff Professional II	D. Hardt, J. Tourek	85.00
Staff Professional I	D. White	65.00
Project Technician III	J. Day, M. Powell	80.00
Project Technician II		70.00
Project Technician I	A. Butler, A. Konves, T. Bugai	55.00
Administration II	L. Benson, A. Davis, M. Dicarlo	50.00
RST Operator III	K. McCourt, D. McAlister	65.00
RST Operator II	V. Lopez, S. Berdine, J. Hopkinson	55.00
RST Operator I	M. Holmes, R. Peeters	45.00
Expenses		cost plus 15%

# EXHIBIT “C”

City’s Representative:

Onofre Ramirez, Senior Civil Engineer

# EXHIBIT “D”

Materials/Information Furnished: None