

**PROFESSIONAL SERVICES AGREEMENT
FOR THE
2022 CITYWIDE PAVEMENT MANAGEMENT PROGRAM (PMP)**

THIS AGREEMENT FOR CONTRACT SERVICES ("Agreement") is made and entered into as of **December 21, 2021**, by and between the CITY OF YORBA LINDA, a municipal organization organized under the laws of the State of California ("City"), and **NCE Engineering**, a (or "a California corporation") ("Consultant").

NOW THEREFORE, the parties hereto agree as follows:

SECTION ONE: SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide those services related to the preparation of the **2022 Citywide Pavement Management Program (PMP)**, as specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference (the "services" or "work"). Consultant warrants that all services will be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry for such services.

1.2 Changes and Additions to Scope of Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by City to Consultant, incorporating therein any adjustment in (i) the Schedule of Compensation, and/or (ii) the Schedule of Performance, which adjustments are subject to the written approval of the Consultant. It is expressly understood by Consultant that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates, and that Consultant shall not be entitled to additional compensation therefor.

1.3 Familiarity with Work. By executing this Agreement, Consultant warrants that (a) it has thoroughly investigated and considered the work to be performed, (b) it has investigated the nature and factual context of the work and fully acquainted itself with the conditions pertaining to it, (c) it has carefully considered how the work should be performed, and (d) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by City, and such latent or unknown condition affects Consultant's ability to perform the Work for the Contract Sum (as defined in Section 2.1 below) Consultant shall immediately inform City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer (as defined in Section 4.2 hereof).

1.4 Standard of Performance. Consultant agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment, or personal property included within the services herein shall be of good quality, fit for the purpose intended.

1.5 Performance to Satisfaction of City. Consultant shall perform all work and tasks comprising the Services to the satisfaction of City within the time specified. If City reasonably determines that any portion of the services is not satisfactory, City shall have the right to take appropriate action, including but not limited to: (a) meeting with Consultant to review the quality of the work and resolve matters of concern; (b) requiring Consultant to repeat unsatisfactory work at no additional charge until they are satisfactory; (c) suspending the delivery of work to Consultant for an indefinite time; (d) withholding payment; and (e) terminating this Agreement as hereinafter set forth.

1.6 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work and services required of Consultant herein without the prior express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of the City. Any such prohibited assignment or transfer shall be void.

SECTION TWO: COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with Exhibit "B" (the "Schedule of Compensation") in a total amount not to exceed **Eighty-Four Thousand Two Hundred Fifty Dollars (\$84,250.00)** (the "Contract Sum"), except as provided in Section 1.2. The method of compensation set forth in the Schedule of Compensation may include a lump sum payment upon completion, payment in accordance with the percentage of completion of the services, payment for time and materials based upon Consultant's rate schedule, but not exceeding the Contract Sum, or such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement at Consultant's actual cost, without additional overhead or services charge, for actual and necessary expenditures for reproduction costs, transportation expense, telephone expense, and similar costs and expenses when and if specified in the Schedule of Compensation.

2.2 Method of Payment. Unless otherwise provided in the Schedule of Compensation, Consultant shall submit to City no later than the tenth (10th) working day of each month, in the form approved by City, an invoice for services rendered prior to the date of the invoice. Such invoice shall (1) describe in detail the services provided, including time and materials, and (2) specify each staff member who has provided services and the number of hours assigned to each such staff member. Such invoice shall contain a certification by a principal member of Consultant specifying that the payment requested is for work performed in accordance with the terms of this Agreement. City will pay Consultant for all expenses stated thereon which are approved by City pursuant to this Agreement no later than forty-five (45) days after invoices are received by the City.

SECTION THREE: PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. All services rendered pursuant to this Agreement shall be performed diligently and within the time period established in Exhibit "C" (the "Schedule of Performance"). Extensions to the time period specified in the Schedule of Performance may be approved in writing by the Contract Officer.

3.3 Force Majeure. The time period specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, acts of any governmental agency other than City, and unusually severe weather, if Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the forced delay when and if in his or her judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

3.4 Term. The term of this agreement shall commence on the date of execution and shall end upon project completion (initial term). This agreement may be extended upon mutual agreement by both parties (extended term). Unless earlier terminated in accordance with Sections 8.11 or 8.12 of this Agreement, this Agreement shall continue in full force and effect until completion of the services, except as otherwise provided in the Schedule of Performance.

SECTION FOUR: COORDINATION OF WORK

4.1 Representative of Consultant. **Charlene Palmer, Principal** is hereby designated as the principal representative of the Consultant, authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith. A substitution of the designated representative must be approved in advance by the City.

4.2 Contract Officer. The Contract Officer shall be **Rick Yee, Deputy Director of Public Works/Assistant City Engineer** or such other person as may be designated by the City Manager of City. It shall be Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and Consultant shall refer any decisions, which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

SECTION FIVE: INSURANCE AND INDEMNIFICATION

5.1 Without limiting Consultant's indemnification obligations, Consultant shall not undertake the services contemplated hereunder until Consultant has obtained all of the insurance required herein from a company or companies acceptable to City, and Consultant shall maintain all such insurance in full force and effect at all times during the term of this License and any

extension or renewal thereof. Insurance shall be placed with insurers having a current A.M. Best rating of no less than A-: VII or equivalent or as otherwise approved by City.

5.2 Consultant shall take out and maintain the following insurance:

5.2.1. Workers' Compensation and Employer's Liability Insurance: Consultant shall cover or insure as required by applicable laws relating to workers' compensation insurance all of its employees performing the services contemplated hereunder, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Consultant shall provide worker's compensation insurance and employer's liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee. Such policy of workers compensation insurance shall contain the following separate endorsements:

(a) "Insurer waives all rights of subrogation against the City of Yorba Linda, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, cancelled, limited, non-renewed or materially changed for any reason by the insurer until thirty (30) days after receipt by the City of Yorba Linda of a written notice of such cancellation, limitation or reduction of coverage."

5.2.2. Commercial General Liability Insurance providing coverage in the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury, Personal Injury or Death and Property.

(b) Damage Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 0001).

(c) If Commercial General Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503 or ISO CG 2504, or insurer's equivalent endorsement provided to City), or the general aggregate limit shall be twice the required occurrence limit.

5.2.3. Comprehensive Automobile Liability Insurance, including owned, non-owned, leased, hired, and borrowed automobiles and similar vehicles, providing the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury or Death and Property Damage.

(b) Coverage shall be at least as broad as Insurance Services Office (ISO) Business and Auto Coverage (Form CA 0001) covering any auto.

5.2.4. Professional Liability: Consultant shall provide coverage appropriate to the Consultant's profession covering Consultant's wrongful acts, negligent actions, errors, or omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the contract work. Consultant shall purchase a one-year extended reporting period i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement. The limits shall be no less than \$1,000,000 per claim and annual aggregate.

5.3 Endorsements: The policies of liability insurance provided for in Paragraphs 5.2.2 through 5.2.4 shall specify that this specific Agreement is insured and that coverage for injury to participants resulting from Consultant's activities is not excluded, and shall be in a form satisfactory to City and contain the following separate endorsements:

(a) “The City of Yorba Linda, its officers, directors, employees, representatives and volunteers, are declared to be additional insureds on all of the above policies with respects to the operations and activities of the named insured at or from the premises of the City of Yorba Linda. The coverage shall contain no special limitations on the scope of protection afforded to the City of Yorba Linda, its officers, directors, employees, representatives and volunteers.”

(b) “This insurance policy shall not be suspended, voided, reduced in coverage or in limits, canceled, limited, non-renewed, or materially changed for any reason until thirty (30) days after receipt by the City of Yorba Linda of a written notice of such cancellation, limitation or reduction of coverage.”

(c) “This insurance policy is primary insurance and no insurance held or owned by the designated additional insureds shall be called upon or looked to cover a loss under said policy; the City of Yorba Linda shall not be liable for the payment of premiums or assessments on this policy.”

(d) “Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Yorba Linda, its officers, directors, employees, representatives, or volunteers.”

(e) “This 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.”

5.4 Evidence of Coverage: Consultant shall at the time of the execution of the Agreement present to City the original policies of insurance required by this Section 5 or a certificate of the insurance, with separate endorsements (Insurance Services Office Form CG 2026, or equivalent), showing the issuance of such insurance and the additional insured and other provisions and endorsements required herein, and copies of all endorsements signed by the insurer's representative. All policies shall contain the Consultant's name and location of the Premises on the certificate. At least thirty (30) days prior to the expiration of any such policy, a

signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended, shall be filed with City. 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.

5.5 Review of Coverage: City shall have the right at any time to review the coverage, form, and limits of insurance required under this Agreement. If, in the sole and absolute discretion of City, the insurance provisions in this Agreement do not provide adequate protection for City, City shall have the right to require Consultant to obtain insurance sufficient in coverage, form and limits to provide adequate protection and Consultant shall promptly comply with any such requirement. City's requirements shall not be unreasonable but shall be adequate in the sole opinion of City to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter.

5.6 Deductibles: Any and all deductibles must be declared and approved by City prior to execution of this Agreement.

5.7 Agreement Contingent Upon Coverage: Notwithstanding any other provision of this Agreement, this Agreement shall be null and void at all times when the above-referenced original policies of insurance or Certificate of Insurance or Renewal Certificates or Endorsements are not on file with City.

5.8 Workers' Compensation Insurance. By his/her signature hereunder, Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this Agreement. To the extent required by law, Consultants and subcontractors will keep Workers' Compensation Insurance for their employees in effect during all work covered by this Agreement. In the event Consultant has no employees requiring Consultant to provide Workers' Compensation Insurance, Consultant shall so certify to the City in writing prior to the City's execution of this Agreement. The City shall not be responsible for any claims in law or equity occasioned by failure of the Consultant to comply with this section or with the provisions of law relating to Worker's Compensation.

5.9 Indemnification. Consultant shall indemnify, defend, and hold City and City's agents, officers, and employees ("City Personnel") harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the negligence, recklessness, or willful misconduct of Consultant, its employees, agents, representatives or subcontractors in the performance of any tasks or services for or on behalf of City, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel. In connection therewith:

5.9.1. Consultant shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith, to the maximum extent allowed under California law including but not limited to Civil Code section 2782.8.

5.9.2. Consultant shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities, to the maximum extent allowed under California law including but not limited to Civil Code section 2782.8..

5.9.3. In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the negligence, recklessness, or willful misconduct of Consultant, Consultant shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees, to the maximum extent allowed under California law including but not limited to Civil Code section 2782.8..

SECTION SIX: RECORDS, REPORTS, AND INTELLECTUAL PROPERTY.

6.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning Consultant's performance of the services required by this Agreement as the Contract Officer shall require.

6.2 Records. Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the cost and the performance of such services. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

6.3 Ownership of Documents and Data. All original drawings, specifications, reports, records, data, documents and other materials, whether in hard copy or electronic form, which are prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement, shall be the property of City and shall be delivered to City upon termination of this Agreement or upon the earlier request of the Contract Officer, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Consultant shall cause all subcontractors to assign to City any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages suffered thereby.

6.4 In the event City or any person, firm or corporation authorized by City reuses said documents and materials without written verification or adaptation by Consultant for the specific purpose intended and causes to be made or makes any changes or alterations in said documents and materials, City hereby releases, discharges, and exonerates Consultant from liability resulting from said change. The provisions of this clause shall survive the completion of this Contract and shall thereafter remain in full force and effect.

6.5 Intellectual Property and Proprietary Information.

6.5.1. Proprietary Information. All proprietary information developed specifically for City by Consultant in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Consultant's underlying materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Consultant agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Consultant's services under this Agreement. Consultant further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of Services by Consultant under this Agreement shall be made to City, and that Consultant shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City.

6.5.2. Reproduction Rights. Any and all patents and copyrights that arise from the services or the creation of work in carrying out this Agreement shall be vested in City, and Consultant hereby agrees to relinquish all claims to such copyrights in favor of City.

6.5.3. Use of Patented Materials. Consultant shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used, or incorporated in the Services performed by Consultant under this Agreement. Consultant shall indemnify, defend, and save City harmless from any and all suits, actions, or proceedings of every nature for or on account of the use of any patented or copyrighted materials.

SECTION SEVEN: RELEASE OF INFORMATION/CONFLICTS OF INTEREST.

7.1 Confidentiality. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

7.2 Release of Confidential Information. Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed hereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

7.3 Conflicts of Interest Prohibited. Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or subcontractor. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subcontractors shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

7.4 Covenant Against Contingent Fee. Consultant covenants that neither it nor any of its officers, employees, agents, or representatives employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement. Consultant further covenants that neither it nor any of its officers, employees, agents, or representatives has paid or agreed to pay any company or person, other than a bona fide employee of Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this provision, City shall have the right to annul this agreement without liability, or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

SECTION EIGHT: LEGAL RELATIONS AND RESPONSIBILITIES.

8.1 Compliance with Law. Consultant shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Consultant.

8.2 Licenses, Permits, Fees and Assessments. Except as otherwise specified herein, Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties, and interest, which may be imposed by law and arise from or are necessary for the performance of the services required by this Agreement.

8.3 Covenant Against Discrimination. The Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement.

8.4 Independent Contractor. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Consultant. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Neither Consultant nor any of Consultant's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from City; and neither Consultant nor any of its employees shall be paid by City time and one-half for working in excess of forty (40) hours in any one week. City is under no obligation to withhold State and Federal tax deductions from Consultant's compensation. Neither Consultant nor any of Consultant's employees shall have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

8.5 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.6 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.7 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefor. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice, or such longer period as may be permitted by the Contract Officer; provided that if the default is an immediate danger to the health, safety and general welfare, City may take such immediate action as City deems warranted. Compliance with the provisions of this section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.11.

8.8 Retention of Funds. City may withhold from any monies payable to Consultant sufficient funds to compensate City for any losses, costs, liabilities, or damages it reasonably believes were suffered by City due to the default of Consultant in the performance of the services required by this Agreement.

8.9 Waiver. No delay or omission in the exercise of any right or remedy of a non defaulting party on any default shall impair such right or remedy or be construed as a waiver. City's consent or approval of any act by Consultant requiring City's consent or approval shall not

be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Consultant. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.10 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.11 Termination Prior To Expiration of Term. This section shall govern any termination of this Agreement, except as specifically provided in the following Section 8.12 for termination for cause. City reserves the right to terminate this Agreement at any time, with or without cause, upon ten (10) days' written notice to Consultant. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 8.8.

8.12 Termination for Default of Consultant. If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.7, take over work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of setoff or partial payment of the amounts owed City as previously stated in Section 8.8.

8.13 Attorney's Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

8.14 Safety. The Consultant shall execute and maintain his/her work so as to avoid injury or damage to any person or property. The Consultant shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out his/her work, the Consultant shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all applicable federal, state, and local statutory and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act.

8.15 Compliance with California Unemployment Insurance Code Section 1088.8. If Consultant is a sole proprietor, then prior to signing the Agreement, Consultant shall provide to

City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Consultant understands that pursuant to California Unemployment Insurance Code section 1088.8, City will report the information from Form W-9 to the State of California Employment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

8.16 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

8.17 Unauthorized Use of City's Name. Except as required by law or with the prior written consent of City (which consent may be withheld in city's sole and absolute discretion), Consultant shall not use City's name, seal or logo in any marketing materials, magazine, trade paper, newspaper, television or radio production or other similar medium, nor shall Consultant state, imply or in any way represent to any third party that City has endorsed or approved Consultant or any of its services or products.

SECTION NINE: MISCELLANEOUS

9.1 Notices. Any notice, demand, request, consent, approval, communication either party desires or is required to give the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch.

To City: CITY OF YORBA LINDA
Attention: **Rick Yee, Deputy Director of Public Works/Assistant City Engineer**
4845 Casa Loma Avenue
Yorba Linda, CA 92886

To Consultant: NCE Engineering
Attention: **Charlene Palmer, Principal**
17050 Bushard Street,
Suite 200
Fountain Valley, CA 92708

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement.

9.3 Integration; Amendment. This Agreement contains the entire understanding of the parties herein and supersedes any and all other written or oral understandings as to those matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered thereby. No amendment, change or modification of this Agreement shall be valid unless in writing, stating that it amends, changes or modifies this Agreement, and signed by all the parties hereto.

9.4 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or inability to enforce shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.5 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.

9.6 Statutory References. All references in this Agreement to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the County of Orange shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

9.7 Special Provisions. Any additional or supplementary provisions or modifications or alterations of this Agreement, if any, shall be set forth in an additional Exhibit “D” (“Special Provisions”) if any such Special Provisions exist. In the event of any discrepancy between the provisions of this Agreement and the Special Provisions, Special Provisions shall take precedence and prevail.

9.8 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement, (2) the Consultant’s signed, original Proposal dated **November 6, 2021** (“Consultant’s Proposal”), and (3) the City’s Request for Proposals (“City’s RFP”), which shall all be referred to collectively hereinafter as the “Contract Documents”. The Consultant’s Proposal and the City’s RFP”, are hereby incorporated by reference, and are made a part of this Agreement. All provisions of this Agreement, the Consultant’s Proposal, and the City’s RFP shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority, (1st) the terms and conditions of this Agreement, (2nd) the provisions of the City’s RFP and (3rd) the provisions of the Consultant’s Proposal.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

CITY:

CITY OF YORBA LINDA

CONSULTANT:

NCE Engineering

By: _____

Its: _____

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Marcia Brown, City Clerk

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM
RUTAN & TUCKER, LLP

By: _____

City Attorney, City of Yorba Linda

EXHIBIT A

SCOPE OF SERVICES

Revised November 6th, 2021

Rick Yee, PE
Assistant City Engineer
4845 Casa Loma Avenue
Yorba Linda, CA 92886
Via Email to Rick Yee ryee@yorbalindaca.gov

RE: Scope and Fee for 2022 PMP Update

Dear Mr. Yee:

NCE is pleased to submit this letter proposal to assist the City of Yorba Linda (City) with the update of the City's 2022 Pavement Management Program (PMP). The City's previous PMP report was last updated in 2020 with pavement condition update on all MPAH network and local streets in Zone 6 and 7. NCE discussed with the City on following key elements in updating the PMP in 2022:

- Based on OCTA "Countywide Pavement Management Plan Guidelines," streets identified on the MPAH must be surveyed at least once every two years. Local streets must be surveyed at least every six years.
- City has previous pavement condition update on entire MPAH network and local streets in Council District 6 and 7 in 2020. Local streets in Council District 1 to 5 were previous updated in 2015.
- City to update entire MPAH network (approximately 64.6 centerline miles) and local streets in Council District 1 to 5 (approximately 113.1 centerline miles) in 2022. This ensures that the City is compliant with OCTA's requirement for certification and funding.



The following Scope of Work will be performed in updating the PMP in 2022.

Fountain Valley, CA
17050 Bushard Street, Suite 200
Fountain Valley, CA 92708
(714) 848-8897


Task 1: Kick-off Meeting and Coordination

NCE will schedule a kick-off meeting with the City to initiate work on this project and discuss key assumptions, objectives, and goals for the funding analyses. The objectives of the kick-off meeting will be:

- Review the scope of work
- Review current database and existing budget assumptions
- Review existing street centerline shapefile
- Review inspection plan
 - Scheduling and access requirements
 - Public safety concerns, requirements, and procedures
 - Quality Management Plan
- Define project objective, criteria and key assumptions
- Establish lines of communication
- Confirm deadlines and establish project schedule and milestones
- Obtain all relevant information from the City

It is critical to establish effective lines of communication with, and coordination amongst, the various project stakeholders from the start of this project. To the extent that any requirements and/or planning issues can be identified early on, this will significantly help to minimize delays during project delivery. Additionally, at the Kick-Off Meeting, the key deliverables and schedule for each task will be reviewed and adjusted accordingly to meet the City's needs. This task also includes up to two (2) additional meetings if required to discuss and revise results.


Deliverables:

-  Meeting agendas and meeting summaries

Task 2: Database Conversion to StreetSaver

NCE will assist with the conversion of the City of Yorba Linda's current PAVER™ database to StreetSaver®. The conversion will be based on the City maintained approximately 215 centerline miles of streets and 1,373 pavement sections. This task would include database conversion and a 1-year StreetSaver® license fee. This software allows for ease of operations, the ability to create custom reports/export to other programs and a direct linkage to GIS generated maps as an optional task. NCE will then conduct database review after conversion to ensure pavement inventory, historical inspection data and maintenance records are saved appropriately in the new database.

Deliverables:

-  Converted database and 1-year StreetSaver® license

Task 3: Pavement Condition Survey and PCI Calculation

NCE will perform pavement condition surveys on the City's entire MPAH pavement network of 64.6 centerline miles and local streets in Council District 1 to 5 of 113.1 centerline miles which were previous updated in 2015. The pavement condition surveys will be performed in accordance with the established standards set forth in ASTM D-6433. A minimum of one sample unit per section will be inspected. Approximately one sample unit will be inspected for each 1,000 lineal feet of street. Any areas which are not typical of the entire section will be inspected and recorded as a special sample unit.



Please note that NCE's scope of work and condition surveys do not address issues including but not limited to traffic, safety and street hazards, geometric issues, street shoulders, sidewalks, curb and gutters, drainage issues or short-term maintenance that should be performed.

NCE will be responsible for providing the equipment necessary for performance of this task. Should City personnel wish to observe NCE's crews during the surveys, we will be more than happy to accommodate. Individual City staff may also accompany NCE's field crews for up to ½ day – to gain hands on training at no additional cost. We have found that this is the most effective training method for agency staff, as they become part of the data collection crew, rather than just an observer.

Data Entry and PCI Calculations

All information collected from the condition surveys will then be entered into the City's pavement management database. This task will be performed at NCE's office in order to provide Quality Control of all data entered into the system. NCE will then perform the pavement condition index (PCI) calculations using the software, and correct any errors found.

Quality Control Checks

Quality Control (QC) checks are critical on a project such as this when a large amount of data needs to be collected and processed. As part of NCE's goal to provide a superior quality product for our clients, we incorporate a QC component into all of our projects. For this project, we have provided for the inclusion of a **QC Manager, Ms. Lisa K Senn**, who will have the following project responsibilities:

- Calibration of all data collection activities
- Review of field activities, including spot checks of field crews
- Review of field procedures and adjustments as needed
- Comparison of collected field data with on-site conditions
- Comparison of current PCIs with previous PCIs to flag sections with high deterioration rates for re-inspection
- Review of all data entry




- Review of analysis and reports to ensure quality products

In addition, NCE will prepare a QC Plan that will include the following components:

- A description of condition survey procedures (sampling, distress types, severities, etc.). All procedures, changes or modifications will be well documented in the QC Plan so that future updates will be consistent.
- An accuracy threshold required for data collection or acceptability. Examples include accurate identification of distress types 95% of the time or 90% of re-inspected sections must be within ± 10 PCI points.
- A description of how data will be checked for accuracy, e.g., 5% re-inspections.
- A comparison of past and current PCI ratings, e.g., if the difference in PCI is more than 2 to 3 points per year, then NCE will research the cause, which may be unrecorded maintenance, premature pavement failures, incorrect survey data, etc.
- Standard safety procedures.

A draft QC Plan will be submitted to the City for review before the field inspection.

Deliverables:



-  Updated pavement management database
-  QC plan
-  Section PCI listing report

Task 4: Update M&R Decision Tree Costs

NCE will first review the maintenance and rehabilitation decision tree and unit costs in the City's database. It assumes no update on the treatment types in the current decision tree. Recent bid tabs will be obtained from the City and reviewed to ensure that most recent costs are used for developing the work plan.

NCE will then use the City's budget assumptions discussed in the kick-off meeting to identify the M&R and/or reconstruction candidates and develop multi-year work plan, based on various criteria and targets set by the City, and evaluate the impacts to the network. Existing or scheduled paving projects, on-going utility work, total construction costs, grouping treatments by neighborhoods (for constructability and phasing), cost-effective treatments, and the predicted network condition will be included in the analyses results. Note the areas outlined as geographical zones may be revised to achieve a more cost effective and constructible program. NCE will also update all maintenance and rehabilitation historical records in 2021 and 2022.

Deliverables:

-  Updated unit costs in decision tree
-  M&R history report

Task 5: Budgetary Analysis and Final PMP Report

Upon completion of the previous tasks, NCE will perform a budget needs analysis using an analysis period of 7 years or a longer period as determined by the City. This will identify M&R requirements for each pavement section and determine the total maintenance and rehabilitation requirements over the entire analysis period. The Needs Analysis identifies sections that need treatment and applies the M&R decision tree to each section. The costs are then summed for the entire period.

The budget scenario analysis uses a weighted effectiveness rating to prioritize sections for repair under constrained, realistic, budgetary assumptions. The effectiveness rating is defined as the area under a pavement performance curve. The effectiveness rating is weighted to place a higher priority on certain streets, such as arterials and collectors.

Multiple funding scenarios may be performed to answer “what-if” questions (the real “meat” of any PMS). NCE will perform up to five budget scenario runs based on input from the City and in compliance with OCTA’s guidelines. Typical funding scenarios include:





- Existing funding levels

In simplistic terms, the budget needs analysis answers the questions: “If I have unlimited funding for street maintenance and repair, which streets should I fix? When should I fix them? What treatments should I apply? How much will it cost?”

- Funding levels required to maintain the PCI
- Funding levels required to increase the PCI by 1 points
- Funding levels required to increase the PCI to 80
- Eliminate or reduce deferred maintenance (unfunded backlog)







NCE will then prepare a report that summarizes the overall condition of the City’s pavement network, the maintenance and rehabilitation strategies used by the City, the results of budgetary analyses, different budget scenarios, and recommendations on the recommended scenario with selected road sections for maintenance and rehabilitation. This report will meet OCTA’s Measure M2 requirements. NCE will prepare a draft report that summarizes above results and submit it for City to review. Upon receipt of the City’s comments on the draft report, a final report will be completed and submitted.

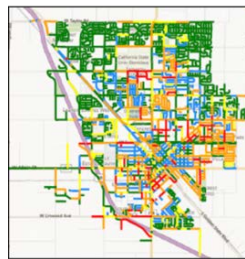
Deliverables:

-  Draft and final report
-  Pavement management plan certification
-  Pavement management data files in a form useable by OCTA
-  Electronic files for OCTA submittal

Task 6: GIS Integration & Mapping Option

The City will consider GIS integration as an option through the StreetSaver® program. In StreetSaver®, the GIS linkage consists of matching segments in the shapefile based on road name, type, and/or direction. StreetSaver® takes far less time to link the database to the shapefile. Once linked, powerful maps can be generated within minutes, as shown in the example above. In addition, shapefiles can be exported for other GIS functions within the City. Built-in queries are available with the toolbox to generate maps or export to shape files. Standard queries include:

-  PCI Range by street section
-  Future PCI by street section
-  Functional classification
-  Maintenance treatment history
-  Impacts of different budget scenarios
-  Sections selected for treatment.



2013



2032 with current
funding \$1.25 m/year



2032 with sales tax
\$6.25 m/year

Deliverables:

-  GIS mapping integration

EXHIBIT B

SCHEDULE OF COMPENSATION

Payment shall be on a “Fixed Fee” basis in accordance with the Consultants Schedule of Compensation attached herewith for the work tasks performed in conformance with Section 2.2 of the Agreement. Total compensation for all work under this contract shall not exceed **Eighty-Four Thousand Two Hundred Fifty Dollars (\$84,250.00)** except as specified in Section 1.2 - Changes and Additions to Scope of Services of the Agreement.

FEE ESTIMATE

Our cost estimate for the scope of work is noted below. NCE can provide additional services as needed based on the attached NCE 2021 Fee Schedule.

Task Description	Labor Hours						Labor Expenses	Reimbursable Expenses	Total Cost
	Project Manager	QA/QC Manager / PIC	Staff Engineer	Field Technician	Technical Assistant				
Rate	\$160	\$200	\$135	\$95	\$80				
1. Kickoff Meeting and Coordination	8		12				\$ 2,900	\$ 100	\$ 3,000
2. Database Conversion to StreetSaver									
StreetSaver Annual Subscription							\$ -	\$ 2,500	\$ 2,500
Database Conversion	2	2	8				\$ 1,800	\$ 6,050	\$ 7,850
3. Pavement Condition Surveys and PCI Calculations	8	4	16	424			\$ 44,520	\$ 8,480	\$ 53,000
4. Update M&R Decision Tree Cost	2	4	16				\$ 3,280	\$ 220	\$ 3,500
5. Budgetary Analysis and Final Report	8	6	40		4		\$ 8,200	\$ 1,300	\$ 9,500
Total	28	16	92	424	4		\$ 60,700	\$ 18,650	\$ 79,350
6. GIS Integration & Mapping Option	2		8				\$ 1,400	\$ 3,500	\$ 4,900
Total with GIS Integration	30	16	100	424	4		\$ 62,100	\$ 22,150	\$ 84,250

Task 2 includes conversion from PAVER to StreetSaver and quality verifications.

Task 3 assumes to inspect 64.6 centerline miles MPAH streets and 113.1 centerline miles local streets.

Task 3 includes 5% re-inspections.

Task 4 assumes to update M&R records and unit costs in the database.

Task 6 assumes City's existing GIS shapefile includes Branch IDs and Section IDs that match pavement section in PAVER inventory.

Please do not hesitate to contact us at 562-233-9507 for Charlene Palmer should you have any further questions. We look forward to continuing our work with you and the City.

Sincerely,

NICHOLS CONSULTING ENGINEERS, Chtd. (NCE)



Charlene Palmer
Principal

EXHIBIT C

SCHEDULE OF PERFORMANCE

Consultants Project Schedule is attached and made a part of this agreement. Consultant shall complete services presented within the scope of work contained within Exhibit “A” in accordance with the attached project schedule.

City of Yorba Linda
2022 PMP Update

	January					February				March				April				May				
	3	10	17	24	31	7	14	21	28	7	14	21	28	4	11	18	25	2	9	16	23	30
1. Kickoff Meeting and Coordination	X																					
2. Conversion to StreetSaver, Condition Surveys, PCI Calculations and Database Conversion																						
<i>StreetSaver Annual Subscription</i>																						
<i>Database Conversion</i>			*																			
<i>Condition Surveys and PCI Calculation</i>													*									
3. Update M&R Decision Tree Cost														X								
4. Budgetary Analysis and Final Report																						
<i>Draft Report</i>																	*					
<i>City Review</i>																						
<i>Final Report</i>																					*	
5. GIS Integration & Mapping Option																						

Assumptions:

"X" indicates meetings

"*" indicates deliverable milestones

Task 1 assumes Kickoff meeting on week 1/3/2022.

Task 2 assumes condition surveys includes potential delays due to weather.

Task 3 includes historical M&R records update and meeting to discuss pavement strategies.

Task 4 assumes two weeks for City to review draft report.