

**PROFESSIONAL SERVICES AGREEMENT
FOR ENGINEER AND LAND SURVEYING SERVICES**

THIS AGREEMENT is made and entered into this 1st day of April, 2013 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and KABBARA ENGINEERING, a Sole Proprietorship ("Consultant").

WITNESSETH:

- A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide engineering services for design of the Zone 16 Street Rehabilitation Project, more fully described in Consultant's Proposal attached as Exhibit "A"; and
- B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and
- C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no participating official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in Consultant's Proposal, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City of Costa Mesa, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the affected department of the City. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the time hereinafter specified. Evaluations of the work will be done by the City Representative or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all confidential data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. As compensation for the provision of services outlined in Exhibit "A" and in accordance with this Agreement, City shall be paid in accordance with the fee schedule set forth in Exhibit "B," attached hereto and incorporated by reference. Consultant's total compensation shall not exceed Thirty-Six Thousand, Eight Hundred Eighty Dollars (\$36,880.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal or in an amount exceeding \$36,880.00 unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

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

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

3.0. TIME OF PERFORMANCE

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

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

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a

period of 24 months ending April 1, 2015, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

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

5.0. INSURANCE

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

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.

- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retroactive date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

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

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

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

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

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

6.0. GENERAL PROVISIONS

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

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Kabbara Engineering,
121 North Harwood Street
Orange, CA 92866
Tel: 714 - 744-9400
Fax: 714 - 744 - 9771
Attn: Leah Kabbara, PE

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: 714-754-5156
Fax: 714-754-5330
Attn: Fariba Fazeli

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "C and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

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

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

6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action,

complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

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

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

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

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

any reasonable assistance and cooperation which City might require.

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

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

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

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

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

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

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

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

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

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

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

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

6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent

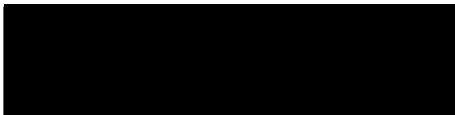
jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

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

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

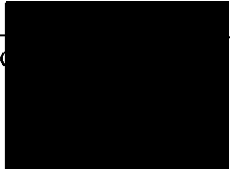
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation



Chief Executive Officer of Costa Mesa

Date: 4/23/13

Department Director 

Date: 4-19-13

CONSULTANT




Signature

Date: April 12, 2013

LEAH A. KABBARA, Principal Engineer

Name and Title



Social Security or Taxpayer ID Number

APPROVED AS TO FORM:



City Attorney

Date: 04/12/13

APPROVED AS TO INSURANCE:



Date: 4/12/13

APPROVED AS TO CONTENT:


Project Manager

Date: 04/10/13

EXHIBIT A
CONSULTANT'S PROPOSAL

April 1, 2013**City of Costa Mesa**Public Services/Engineering
77 Fair Drive, 4th Floor
Costa Mesa, California 92628

Attention: Fariba Fazeli, P.E.

Subject: Fee Proposal (Revised) to Provide Professional Engineering Services for Zone 16 Street Rehabilitation Projects

Dear Ms. Fazeli:

Attached herewith per your request is our fee proposal per the attached man-hour chart for Professional Engineering Services for the subject street improvement projects in the City of Costa Mesa. Our proposal has been revised to include two separate field reviews to identify and quantify, and then to mark removals for the contractor prior to construction. The project limits and streets included in our estimate are shown on the attached Zone 16, List of Streets Included. Our total lump sum fee proposal, including City requested contingency for Arborist Services (as required) for the subject project is as follows:

Description	Total Fee
ZONE 16, Street Rehabilitation Projects	
A. Field Review to identify & quantify removals	\$ 14,000.00
B. Specifications (3 Separate Sets/Projects)	\$ 3,880.00
C. Specifications for P.C.C. Repair Project	\$ 14,000.00
D. Contingency for Certified Arborist's Services (as directed by the City)	\$ 5,000.00
TOTAL LUMP SUM FEE	\$ 36,880.00

Thank you for the opportunity to be of service. We look forward to working with you on this project. If you have any questions please contact me at (714) 744-9400, extension 22, or email at leah@kabbara.net.

Sincerely,


 PRINCIPAL ENGINEER

**CITY OF COSTA MESA
ZONE 16 STREET REHABILITATION
LIST OF STREETS INCLUDED**

Item No.	Street Name	From	To	Zone	LF-CL	W	SF	PCI
1	Madison Ave	Paularino Ave	Cheyenne St	16	800	37	29600	48
2	McKinley Way	Cheyenne Ave	Cul-de-sac	16	453	37	18935	49
3	Taft Way	Cul-de-sac	Carson St	16	396	37	16826	51
4	Taylor Way	Cul-de-sac	Austin St	16	423	37	17825	51
5	Austin St	Van Buren Ave	Coolidge Ave	16	782	37	28934	54
6	Concord St	Pierce Ave	Jefferson Ave	16	1040	37	38480	54
7	Fillmore Way	Cul-de-sac	Cul-de-sac	16	699	37	30211	54
8	Annapolis St	Garfield Ave	Harding Way	16	500	37	18225	55
9	Grant Ave	Baker St	Cul-de-sac	16	749	37	29887	55
10	Lincoln Way	Cheyenne Ave	Cul-de-sac	16	475	37	19749	56
11	Pierce Ave	Cheyenne Ave	Concord St	16	720	37	26640	56
12	Roosevelt Way	Cul-de-sac	Carson St	16	378	37	16160	58
13	Augusta St	Fairview Rd	Van Buren Ave	16	520	37	19240	59
14	Cleveland Ave	Cul-de-sac	Paularino Ave	16	749	37	29887	60
15	Paularino Ave	Fairview Rd	Helena Pl	16	3860	37	142820	61
16	Coolidge Ave	Paularino Ave	Charleston St	16	1514	37	56018	62
17	Harding Way	Cul-de-sac	Cul-de-sac	16	678	37	29434	62
18	Tyler Way	Cul-de-sac	Austin St	16	438	37	18380	63
19	Atlanta Way	Cul-de-sac	Van Buren Ave	16	440	37	18454	64
20	Arthur Ave	Dorset Ln	Paularino Ave	16	269	37	9953	65
21	Buchanan Way	Cul-de-sac	Dorset Ln	16	280	37	12534	65
22	Johnson Ave	Paularino Ave	Cheyenne St	16	800	37	29600	68
23	Dorset Ln	Cul-de-sac	Cleveland Ave	16	832	37	30509	73
24	Garfield Ave	Cul-de-sac	Paularino Ave	16	763	37	30405	73
25	Cheyenne St	Coolidge Ave	Paularino Ave	16	2830	37	104710	75
26	Springfield St	Hayes Ave	Cheyenne St	16	600	37	23150	75
27	Bismark Way	Cul-de-sac	Van Buren Ave	16	465	37	19379	77
28	Hayes Ave	Paularino Ave	Springfield St	16	520	37	19240	77
29	Trenton Way	Jefferson Ave	Cul-de-sac	16	475	37	19749	77
30	Charleston St	Boston Way	Coolidge Ave	16	1100	37	40700	78
31	Jefferson Ave	Cheyenne St	Concord st	16	710	37	26270	78
32	Hartford Way	Jefferson Ave	Cul-de-sac	16	300	37	13274	83
33	Monroe Way	Cheyenne Ave	Cul-de-sac	16	488	37	20230	83
34	Denver Dr	Babb St	Cul-de-sac	16	747	37	29813	85
35	Boston Way	Cul-de-sac	Charldston St	16	248	37	11350	88
36	Helena Cir	Cul-de-sac	Cul-de-sac	16	560	37	24793	89
37	Babb St	Baker St	Paularino Ave	16	831	37	30747	90
38	Boise Way	Cul-de-sac	Van Buren Ave	16	450	37	18824	90
39	Lansing Ln	Hayes Ave	Cheyenne St	16	819	37	30303	90
40	Carson St	Van Buren Ave	Coolidge Ave	16	800	37	29600	91
41	Helena Pl	Helena Cir	Paularino Ave	16	264	37	9768	94
42	Coolidge Ave	Paularino Ave	Baker St	16	840	20	17220	100
43	Albany St	Coolidge Ave	Fillmore Way	16	330	37	12210	94

Up to 2"AC

1071364

Slurry

TOTAL 31935

**KABBARA ENGINEERING
MAN-HOUR FEE SCHEDULE**

FOR
ZONE 16

Street Rehabilitation Projects

TASK	Principal Engineer \$165	Land Surveyor \$160	Survey Crew 2 Man \$210	Project Engineer \$150	Civil Designer \$100	CADD \$75	Clerical \$65	TOTAL COST
A. FIELD REVIEW								
1. FIELD REVIEW TO IDENTIFY AND QUANTIFY PCC AND AC REMOVALS (EST. 31,935 l.f.)					140			\$14,000
SUBTOTAL COST								\$14,000
B. PROJECT SPECIFICATIONS								
1. PREPARE SPECIFICATIONS FOR ZONE 16, PAVEMENT/AC OVERLAY PROJECT				4			8	\$1,120
2. PREPARE SPECIFICATIONS FOR ZONE 16, STREET & PARKWAY PCC REPAIR PROJECT				4			16	\$1,640
3. PREPARE SPECIFICATIONS FOR ZONE 16, STREET SLURRY SEAL PROJECT				4			8	\$1,120
SUBTOTAL COST								\$3,880
C. MARK REMOVALS FOR CONSTRUCTION								
1. FIELD REVIEW TO MARK PCC AND AC REMOVALS FOR CONSTRUCTION PURPOSES (EST. 31,935 l.f.)					140			\$14,000
SUBTOTAL COST								\$14,000
GRAND TOTAL								\$31,880

ZONE 16 STREET REHABILITATION PROJECT

Scope of Work

The City is planning to rehabilitate the street located between 73 Freeway to the east, Fairview Road to the west, Baker Street to the South and 405 Freeway to the north, Zone 16 (see attachment 1).

The consultant shall evaluate the parkway conditions (i.e. uplifted sidewalks, depressed or dysfunctional C&G, x-gutters and driveways) and the pavement condition of each street within the above mentioned neighborhood. The project will be advertised as two separate projects: concrete project and asphalt concrete project). The concrete project will be a set of specifications with an excel file identifying each address that requires repair with the type of work (i.e. 535 American, 50 SF sidewalk and 20 LF of C&G and 200 SF sidewalk). The AC contract will have quantities for AC, mill and overlay and localized removal and reconstruction of the pavement. After the concrete removal areas have been located, the consultant shall have an arborist evaluate each trees that is impacted due to the proposed concrete repairs. The arborist needs to evaluate the impacted tree and come up with a recommendation for each tree.

Fee should also include all labor required for a second visit to the site and marking the removal areas prior to construction.

Zone 16 Street Rehabilitation Project

Attachment 1

Street Name	From	To	Zone	LF-CL	W	SF	PCI
Madison Ave	Paularino Ave	Cheyenne St	16	800	37	29600	48
McKinley Way	Cheyenne Ave	Cul-de-sac	16	453	37	18935	49
Taft Way	Cul-de-sac	Carson St	16	396	37	16826	51
Taylor Way	Cul-de-sac	Austin St	16	423	37	17825	51
Austin St	Van Buren Ave	Coolidge Ave	16	782	37	28934	54
Concord St	Pierce Ave	Jefferson Ave	16	1040	37	38480	54
Fillmore Way	Cul-de-sac	Cul-de-sac	16	699	37	30211	54
Annapolis St	Garfield Ave	Harding Way	16	500	37	18225	55
Grant Ave	Baker St	Cul-de-sac	16	749	37	29887	55
Lincoln Way	Cheyenne Ave	Cul-de-sac	16	475	37	19749	56
Pierce Ave	Cheyenne Ave	Concord St	16	720	37	26640	56
Roosevelt Way	Cul-de-sac	Carson St	16	378	37	16160	58
Augusta St	Fairview Rd	Van Buren Ave	16	520	37	19240	59
Cleveland Ave	Cul-de-sac	Paularino Ave	16	749	37	29887	60
Paularino Ave	Fairview Rd	Helena Pl	16	3860	37	142820	61
Coolidge Ave	Paularino Ave	Charleston St	16	1514	37	56018	62
Harding Way	Cul-de-sac	Cul-de-sac	16	678	37	29434	62
Tyler Way	Cul-de-sac	Austin St	16	438	37	18380	63
Atlanta Way	Cul-de-sac	Van Buren Ave	16	440	37	18454	64
Arthur Ave	Dorset Ln	Paularino Ave	16	269	37	9953	65
Buchanan Way	Cul-de-sac	Dorset Ln	16	280	37	12534	65
Johnson Ave	Paularino Ave	Cheyenne St	16	800	37	29600	68
Dorset Ln	Cul-de-sac	Cleveland Ave	16	832	37	30509	73
Garfield Ave	Cul-de-sac	Paularino Ave	16	763	37	30405	73
Cheyenne St	Coolidge Ave	Paularino Ave	16	2830	37	104710	75
Springfield St	Hayes Ave	Cheyenne St	16	600	37	23150	75
Bismark Way	Cul-de-sac	Van Buren Ave	16	465	37	19379	77
Hayes Ave	Paularino Ave	Springfield St	16	520	37	19240	77
Trenton Way	Jefferson Ave	Cul-de-sac	16	475	37	19749	77
Charleston St	Boston Way	Coolidge Ave	16	1100	37	40700	78
Jefferson Ave	Cheyenne St	Concord st	16	710	37	26270	78
Hartford Way	Jefferson Ave	Cul-de-sac	16	300	37	13274	83
Monroe Way	Cheyenne Ave	Cul-de-sac	16	488	37	20230	83
Denver Dr	Babb St	Cul-de-sac	16	747	37	29813	85
Bear St	Baker St	On/Off Ramps S	16	400	40	16000	88
Boston Way	Cul-de-sac	Charldston St	16	248	37	11350	88
Helena Cir	Cul-de-sac	Cul-de-sac	16	560	37	24793	89
Babb St	Baker St	Paularino Ave	16	831	37	30747	90
Boise Way	Cul-de-sac	Van Buren Ave	16	450	37	18824	90
Lansing Ln	Hayes Ave	Cheyenne St	16	819	37	30303	90
Bear St	On/Off Ramps S	Baker St	16	400	40	16000	91
Carson St	Van Buren Ave	Coolidge Ave	16	800	37	29600	91

EXHIBIT B
PROJECT SCHEDULE

SCHEDULE FOR THE DESIGN OF ZONE 16 STREET REHABILITATION
PROJECT

TASK	DATE
1. Proposal Received by the City	3/27/13
2. Project Kick-off Meeting	4/19/13
3. 100% Design Submittal (PS&E)	5/27/13
4. Recommendations for trees	6/03/13
5. Field Marking of the removal limits	9/09/13

EXHIBIT C

CITY COUNCIL POLICY 100-5

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

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

- b. Establishing a Drug-Free Awareness Program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
 - 1. Abide by the terms of the statement; and
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

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

- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.



KABBENG-01

HBCT11

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/29/2013

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

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

PRODUCER License # 0564249 (OC) Heffernan Insurance Brokers 6 Hutton Centre Drive, Suite 500 Santa Ana, CA 92707	CONTACT NAME:	
	PHONE (A/C, No, Ext):	1 (714) 361-7700
	FAX (A/C, No):	1 (714) 361-7701
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Citizens Insurance Company of America	31534
	INSURER B : Hanover American Insurance Company	36064
	INSURER C : Argonaut Insurance Company*	
	INSURER D :	
	INSURER E :	
	INSURER F :	

INSURED

Kabbara Engineering
121 N. Harwood St.
Orange, CA 92866-1626

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X		OBF908728701	6/1/2012	6/1/2013	EACH OCCURRENCE \$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 2,000,000
							GENERAL AGGREGATE \$ 4,000,000
							PRODUCTS - COMP/OP AGG \$ 4,000,000
							\$
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						
A	AUTOMOBILE LIABILITY			OBF908728701	6/1/2012	6/1/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (PER ACCIDENT) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DED						\$
	RETENTION \$						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		N/A	WZF911732101	6/1/2012	6/1/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						OTHER
	if yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	PROFESSIONAL			1AE1204202	8/3/2012	8/3/2013	LIABILITY 2,000,000
C	LIABILITY			1AE1204202	8/3/2012	8/3/2013	AGGREGATE 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Projects as on file with the insured including but not limited to Zone 16 Street Rehabilitation Project. The City of Costa Mesa, its elected and appointed boards, officers, agents and employees are named as additional insureds and primary/non-contributory clause applies to the general liability policy-see attached endorsement.

CERTIFICATE HOLDER**CANCELLATION**

City of Costa Mesa
Public Services/Engineering
Attn: Fariba Fazeli, P.E., City Engineer
77 Fair Drive, 4th Floor
Costa Mesa, CA 92628

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY SUPPLEMENTARY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

I. Additional Insured by Contract, Agreement or Permit

Under **SECTION II – LIABILITY, C. Who Is An Insured**, Paragraph 4. is added as follows:

a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract, agreement or permit that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

but only with respect to:

- (3) “Your work” for the additional insured(s) at the location designated in the contract, agreement or permit; or
- (4) Premises you own, rent, lease, control or occupy.

This insurance applies on a primary basis if that is required by the written contract, agreement or permit.

b. This provision does not apply:

- (1) Unless the written contract or written agreement has been executed or permit has been issued prior to the “bodily injury”, “property damage” or “personal and advertising injury”;

(2) To any person or organization included as an insured by an endorsement issued by us and made part of this Policy;

(3) To any lessor of equipment:

- (a) After the equipment lease expires; or
- (b) If the “bodily injury”, “property damage” or “personal and advertising injury” arises out of the sole negligence of the lessor;

(4) To any:

- (a) Owners or other interests from whom land has been leased which takes place after the lease for that land expires; or
- (b) Managers or lessors of premises if:

(i) The occurrence takes place after you cease to be a tenant in that premises; or

(ii) The “bodily injury”, “property damage” or “personal and advertising injury” arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor; or

(5) To “bodily injury”, “property damage” or “personal and advertising injury” arising out of the rendering of or the failure to render any professional services. This includes but is not limited to any professional

services as an architect or engineer arising out of any construction agreement or activities under which any insured or anyone acting on any insured's behalf provides or provided service, advice, expertise or work. Construction includes, but is not limited to, the plan, conception, design, build, construct, assembly, development, safety, erection, formation, reconstruct, rehabilitation, repair, or any improvement made to real property. Construction also includes the hiring, supervision or management of any of these activities. However, this exclusion does not apply to liability arising out of an insured's presence at a jobsite that was not caused by professional activities listed in the above paragraph.

- c. Additional insured coverage provided by this provision will not be broader than coverage provided to any other insured.
- d. All other insuring agreements, exclusions, and conditions of the policy apply.

II. Additional Insured by Contract, Agreement or Permit – Primary and Non-contributory

The following is added to **SECTION III – COMMON POLICY CONDITIONS:**

M. Other Insurance

1. Additional Insureds

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under **SECTION II - LIABILITY, Part C – Who is An Insured**, is primary and non-contributory, the following applies:

If other valid and collectible insurance is available to the Additional Insured for a loss we cover under **SECTION II – LIABILITY, Part A. Coverages, Paragraph 1., Business Liability** our obligations are limited as follows:

a. Primary Insurance

This insurance is primary to other insurance that is available to the Additional Insured which covers the Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

- (1) For the sole negligence of the Additional Insured;
- (2) When the Additional Insured is an Additional Insured under another primary liability policy; or
- (3) When **b.(2)** below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **b.(3)** below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

- (b) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;
- (c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner; or
- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of **SECTION II – LIABILITY, Part A. Coverages, 1. Business Liability.**

When this insurance is excess, we will have no duty under **SECTION II – LIABILITY, Part A. Coverages, 1. Business Liability** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

III. Aggregate Limit of Insurance (Per Project)

- a. For purposes of the coverage provided by this endorsement, **D. Liability and Medical Expenses Limits of Insurance** under **Section II – Liability** is amended by adding the following:

The General Aggregate Limit under **D. Liability and Medical Expenses Limits of Insurance** applies separately to each of "your projects" or each location listed in the Declarations.

b. For purposes of the coverage provided by this endorsement **F. Liability And Medical Expenses Definitions** under **Section II - Liability** is amended by adding the following:

a. "Your project" means:

- i. Any premises, site or location at, on, or in which "your work" is not yet completed; and
- ii. Does not include any location listed in the Declarations.

IV. Blanket Waiver of Subrogation

Paragraph **K. Transfer Of Rights Of Recovery Against Others To Us** in **Section III – Common Policy Conditions** is amended by the addition of the following:

We will waive any right of recovery we may have against any person or organization when you have agreed in a written contract, permit or agreement to waive any rights of recovery against such person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard".