

**PROFESSIONAL SERVICES AGREEMENT  
FOR PUBLIC WORKS INSPECTION SERVICES**

THIS AGREEMENT is made and entered into this 31st day of December, 2013 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and Onward Engineering, a California corporation (“Consultant”).

**WITNESSETH:**

- A. WHEREAS, City proposes to have Consultant perform construction inspection services for capital improvement projects as described herein below; 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 specific services in connection with the project described below (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the City’s Request for Proposal (“RFP”) attached hereto as Exhibit “A” and incorporated herein by reference and Consultant’s Response to City’s RFP (the “Response”). A copy of said Response is attached hereto as Exhibit “B” 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. 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. 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.

1.4. 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.

1.5 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.

1.6. 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.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed Forty Thousand Dollars (\$40,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Response 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's Project Manager for approval on a progress basis, but no more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed 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 "D," 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 three (3) year, ending on 12/31/16 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 and maintain during the life of this Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) 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 and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (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. 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 comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

5.3. 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.

5.4. 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 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:**

Onward Engineering

300 S. Harbor Blvd., Suite 814

Anaheim, CA 92805

Tel: 714-533-3050

Fax: 714-948-8978

Attn: Majdi Ataya, PE

**IF TO CITY:**

City of Costa Mesa

77 Fair Drive

Costa Mesa, CA 92626

Tel: 714-754-5323

Fax: 714-754-5028

Attn: Fariba Fazeli, PE

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 shall protect, defend, indemnify and hold harmless City and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of Consultant, its employees, agents or subcontractors in the performance of this Agreement.

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 secure, at his 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.

6.11. 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.

6.12. 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.

6.13. 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.

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

6.15. 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 the RFP or the Response, 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 both the Response and the RFP and the Response shall govern over the RFP.

6.16. 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.

6.17. 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.

6.18. 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.

6.19. 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.

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

6.21. 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.

6.22. 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 as 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.

6.23. 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.

6.24. 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

[Redacted Signature]

Chief Executive Officer of the City of Costa Mesa

Date: 12/31/13

A municipal corporation

[Redacted Signature]

Director of Public Services

Date: 12.31.13

CONSULTANT

[Redacted Signature]

Signature

Date: 12/26/2013

Muhammed Alwaj, Vice President  
Name and Title

[Redacted]

Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

[Redacted Signature]

City Attorney

Date: 12/26/13

APPROVED AS TO INSURANCE:

[Redacted Signature]

Risk Management

Date: 12/26/13

APPROVED AS TO CONTENT:

[Redacted Signature]

Project Manager

Date: 12/26/13



ONWAR-4

OP ID: SF

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/16/13

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 Solomon & Solomon Ins Brokers Lic #0C30562 23332 Mill Creek Dr Ste 135 Laguna Hills, CA 92653 Kathy Shoffelt	949-583-0300	CONTACT NAME:	
	949-951-9342	PHONE (A/C, No, Ext):	FAX (A/C, No):
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Hartford Casualty Insurance Co	NAIC # 29424
		INSURER B: Sentinel Insurance Company	11000
		INSURER C: Oak River Insurance Company	34630
		INSURER D: HISCOX/Lloyd's Syndicate	047731
		INSURER E:	
		INSURER F:	

<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b>	<b>REVISION NUMBER:</b>
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			72SBAUV3949	07/19/13	07/19/14	EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY	X	X				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> Business Owners						PERSONAL & ADV INJURY \$ 2,000,000
	<input checked="" type="checkbox"/> No Deductible						GENERAL AGGREGATE \$ 4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 4,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
B	AUTOMOBILE LIABILITY			72UECUM6814	07/21/13	07/21/14	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> Comp: \$500	<input checked="" type="checkbox"/> Coll: \$500					\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR		72SBAUV3949	07/29/13	07/19/14	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$ 1,000,000
	DED <input checked="" type="checkbox"/>	RETENTION \$ 10,000					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			2200059189131	06/01/13	06/01/14	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N <input type="checkbox"/>	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liab			ANE11261413	08/07/13	08/07/14	Per Claim 1,000,000
	Claims-Made 7/24/04						DED PER CLAIM \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Costa Mesa, its elected or appointed boards, officers, agents, and employees are included as additional insured with primary non-contributory wording applies per the Business Liability Form SS0008, pages (10-17).  
Waiver of subrogation applies to general liability per the SS0008 form.  
Waiver of subrogation applies \*\*\*PLEASE SEE ATTACHED NOTEPAD\*\*\*\*

**CERTIFICATE HOLDER****CANCELLATION**

CITYCOS

City of Costa Mesa  
attn: Latty Dreiman  
77 Fair Drive  
Costa Mesa, CA 92628-1200

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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**NOTEPAD:**

HOLDER CODE CITYCOS  
INSURED'S NAME Onward Engineering

ONWAR-1  
OP ID: SF

PAGE 2  
DATE 12/16/13

to workers comp per WC990410A form.  
Policy provides 30 days written notice of cancellation for other than  
non-payment of premium

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**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA  
BLANKET BASIS**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

The additional premium for this endorsement shall be 2.00 % of the total policy premium otherwise due on such remuneration.

The minimum premium for this endorsement is \$ 350.00

**Schedule**

**Person or Organization**

**Job Description**

ALL ORGANIZATIONS FOR WHOM THE WAIVER OF SUBROGATION IS  
ISSUED

ALL CALIFORNIA OPERATIONS

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective 06/01/2013

Policy No. 2200059189-131

Endorsement No. 1

Insured ONWARD ENGINEERING

Premium \$

Insurance Company

Countersigned by \_\_\_\_\_

Oak River Insurance Company



## BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

### A. COVERAGES

#### 1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

##### Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

## BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

### e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
  - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
  - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

## 2. MEDICAL EXPENSES

### Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
- provided that:
- (1) The accident takes place in the "coverage territory" and during the policy period;
  - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
  - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

## 3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
- (1) All expenses we incur.
  - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
  - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
  - (5) All costs taxed against the insured in the "suit".
  - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

## BUSINESS LIABILITY COVERAGE FORM

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
  - (a) Agrees in writing to:
    - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
    - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (b) Provides us with written authorization to:
    - (i) Obtain records and other information related to the "suit"; and
    - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an Insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

## B. EXCLUSIONS

### 1. Applicable To Business Liability Coverage

This insurance does not apply to:

#### a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

#### b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

**BUSINESS LIABILITY COVERAGE FORM**

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or



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- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i) Any insured; or
    - (ii) Any person or organization for whom you may be legally responsible;
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

## BUSINESS LIABILITY COVERAGE FORM

### g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

### h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

### i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

### j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

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- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
  - (a) Body piercing (not including ear piercing);
  - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
  - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

### k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

### l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

### m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

### n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

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**o. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**p. Personal And Advertising Injury**

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:
  - (a) Advertising, broadcasting, publishing or telecasting;
  - (b) Designing or determining content of web sites for others; or
  - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. - Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:
  - (a) An "advertisement" for others on your web site;
  - (b) Placing a link to a web site of others on your web site;
  - (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
  - (d) Computer code, software or programming used to enable:
    - (i) Your web site; or
    - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

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- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

### q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

### r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

### s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

### t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

### Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

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### 2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

#### a. Any Insured

To any insured, except "volunteer workers".

#### b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

#### c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

#### d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

#### e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

#### f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

#### g. Business Liability Exclusions

Excluded under Business Liability Coverage.

## C. WHO IS AN INSURED

### 1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

### 2. Each of the following is also an insured:

#### a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

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(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

**b. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

**d. Legal Representative If You Die**

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

**e. Unnamed Subsidiary**

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Operator of Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

## BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

### a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

### b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.



**BUSINESS LIABILITY COVERAGE FORM**

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**c. Lessors Of Land Or Premises**

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
  - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
  - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
  - (a) In connection with your premises; or
  - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

  - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
  - (b) Supervisory, inspection, architectural or engineering activities.

**e. Permits Issued By State Or Political Subdivisions**

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
  - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
  - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
  - (a) In the performance of your ongoing operations;
  - (b) In connection with your premises owned by or rented to you; or
  - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
    - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
    - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

## BUSINESS LIABILITY COVERAGE FORM

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

#### 1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

#### 2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

#### 3. Each Occurrence Limit

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

#### 4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

#### 5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

#### 6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

## BUSINESS LIABILITY COVERAGE FORM

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

#### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

#### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

##### a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

##### b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

##### c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

##### d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

##### f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

## BUSINESS LIABILITY COVERAGE FORM

This Paragraph f. applies separately to you and any additional insured.

### 3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

### 4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

### 6. Representations

#### a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

#### b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

### 7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

#### b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

##### (1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

##### (2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

##### (3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

##### (4) Aircraft, Auto Or Watercraft

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 A. - Coverages.

##### (5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. - Coverages.

## BUSINESS LIABILITY COVERAGE FORM

### (6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

### (7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

#### (a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

#### (b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part 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 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.

### 8. Transfer Of Rights Of Recovery Against Others To Us

#### a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

#### b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

**BUSINESS LIABILITY COVERAGE FORM**

**F. OPTIONAL ADDITIONAL INSURED COVERAGES**

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

**1. Additional Insured - Designated Person Or Organization**

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

**2. Additional Insured - Managers Or Lessors Of Premises**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**3. Additional Insured - Grantor Of Franchise**

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

**4. Additional Insured - Lessor Of Leased Equipment**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**6. Additional Insured - State Or Political Subdivision - Permits**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

## BUSINESS LIABILITY COVERAGE FORM

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

### 7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

### 8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

a. Their financial control of you; or

b. Premises they own, maintain or control while you lease or occupy these premises.

## BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

### 9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations for the additional insured(s); or

(2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

### 10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

## G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:



## BUSINESS LIABILITY COVERAGE FORM

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication
- provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.
7. "Electronic data" means information, facts or programs:
    - a. Stored as or on;
    - b. Created or used on; or
    - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, calls, data processing devices or any other media which are used with electronically controlled equipment.
  8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
  9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
  10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
  11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
    - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
    - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
    - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
    - b. Your fulfilling the terms of the contract or agreement.
  12. "Insured contract" means:
    - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
    - b. A sidetrack agreement;
    - c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
    - d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
    - e. An elevator maintenance agreement; or
    - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

## BUSINESS LIABILITY COVERAGE FORM

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
    - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
  - (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning;
  - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;

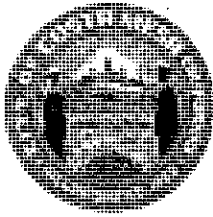
## BUSINESS LIABILITY COVERAGE FORM

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral, written or electronic publication of material that violates a person's right of privacy;
  - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
  - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
  - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.**
- 19. "Products-completed operations hazard";**
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
    - (1) Products that are still in your physical possession; or
    - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
      - (a) When all of the work called for in your contract has been completed.
      - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
      - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
    - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
    - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20. "Property damage" means:**
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:**
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.**
- 23. "Volunteer worker" means a person who:**
- a. Is not your "employee";

## BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
  - c. Acts at the direction of and within the scope of duties determined by you; and
  - d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 24. "Your product":**
- a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
    - (2) The providing of or failure to provide warnings or instructions.
  - c. Does not include vending machines or other property rented to or located for the use of others but not sold.
- 25. "Your work":**
- a. Means:
    - (1) Work or operations performed by you or on your behalf; and
    - (2) Materials, parts or equipment furnished in connection with such work or operations.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
    - (2) The providing of or failure to provide warnings or instructions.

**EXHIBIT A**  
**CITY'S REQUEST FOR PROPOSAL**



# CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

FROM THE DEPARTMENT OF PUBLIC SERVICES/ENGINEERING DIVISION

August 30, 2011

**SUBJECT: REQUEST FOR PROPOSALS TO PROVIDE CONSTRUCTION INSPECTION SERVICES FOR CITY CAPITAL IMPROVEMENT PROJECTS FISCAL YEAR 2011 - 2012 (PHASE I)**

Dear Consultant:

The City of Costa Mesa is requesting a proposal from your firm to provide construction inspection services for capital improvement projects.

### KEY EVENTS AND DATES

<b>RFP released</b>	<b>08/29/11</b>
<b>Proposal due</b>	<b>09/15/11</b>
<b>Interviews (if requested by City)</b>	<b>09/22/11</b>
<b>Award of Consultant Contract</b>	<b>10/03/11</b>

Enclosed is a Request for Proposals (RFP) to provide construction inspection services on an "on-call" basis. The duration of the contract will be one year unless the contract funding is expended earlier or both parties agree to extend the contract for a second year. The proposal requirements and the necessary professional services required by the City are stated within the RFP. The consultant shall provide all services as requested in the RFP and stated in the submitted proposal.

### PROPOSAL SUBMITTAL REQUIREMENTS:

Please submit three (3) copies of the proposal and one (1) copy of the fee proposal no later than 3:00 p.m. on September 15, 2011. All proposals shall be delivered or mailed to:

Thomas L. Banks, P. E.  
City of Costa Mesa  
Public Services/Engineering  
77 Fair Drive, 4<sup>th</sup> Floor  
Costa Mesa, CA 92628

Sincerely,



Ernesto Munoz, P. E.  
City Engineer

**REQUEST FOR PROPOSALS  
FOR CONSTRUCTION INSPECTION SERVICES  
FISCAL YEAR 2011 - 2012 (PHASE I)**

**1. INTRODUCTION**

In order to accommodate the current number of projects which are under construction, there will be a need to supplement the staffing of the Engineering Division in providing construction inspection services. This request for proposal is being issued to have a consultant provide for these inspection services on an hourly basis. The work will be assigned on either a project basis, or on an on-call basis. These issues will be addressed between the consultant and the City during the negotiation phase and during the period of the contract.

**2. CONTENT OF PROPOSAL**

To maintain uniformity, your proposal must be limited to a maximum of twelve pages (excluding front and back covers, section dividers, resumes, and photographs) and include the following:

- An introduction.
- A project team organization chart identifying those who will perform work and a brief resume of each team member, their field of expertise, including similar type projects in which they have been directly involved. Identify the Project Manager proposed for this project. The Project Manager will be the primary contact person to represent your firm. Sub-consultants, if any, shall be identified in the proposal with the same requirements as for the main consultant.
- Statement of understanding of services to be provided and any suggestions the City should be made aware of.
- A list of similar projects that your firm has completed within the last five years. Information of the completed projects should include project name and description, agency or client name, along with the person to contact and telephone number, year completed, engineering fee, and project construction cost.
- A fee proposal provided in a separate sealed envelope.

**3. CONSULTANT SELECTION COMMITTEE**

All Consultants responding to this Request for Proposals will be evaluated on the basis of their expertise, prior experience on similar projects, demonstrated competence, timely performance, ability to meet the project schedule, adequate staffing, responsiveness to the clients needs and concerns, and an understanding of construction inspection services required by the City.

The Public Services Department of the City of Costa Mesa has established a Consultant Selection Committee consisting of at least four (4) members from this department who have acted in the capacity of Project Manager or Project Engineer for the City on previous similar projects. The evaluation of each proposal will be based on the technical information and qualifications presented in the proposal, reference checks, and other information, which will be gathered independently.

**4. FEE PROPOSAL**

- A. One separate fee schedule shall be submitted in a separate sealed envelope plainly labeled "Fee Proposal" with your company's name and the project title.
- B. A cover letter stating the hourly rate for staff that will be providing services. The hourly rate shall be the fully burdened rate for all communications devices, vehicles and safety equipment.
- C. Payment shall not be processed for any submitted invoices if the Consultant has not submitted the deliverables within the time frame provided in the contract.

**5. ESTABLISHMENT OF FEES**

The fee proposal will not be opened until the Consultant Selection Committee has evaluated the consultants' submitted proposals. In conformance with the Mini-Brooks Act, the City will select the Consultant based on qualifications, and then negotiate a contract based on the available funding of \$50,000 and a further breakdown of the hourly rate submitted in the fee proposal.

**6. PROFESSIONAL SERVICES AGREEMENT**

City of Costa Mesa has a sample of the Professional Services Agreement, which is available at the City for your review. The RFP and the consultant's proposal will be attached to and become part of the executed agreement as exhibits.

The City will not permit reduction in the City's "Scope of Consultant Services" without written approval.

**7. INSURANCE REQUIREMENTS**

General Liability:	\$1,000,000
Automobile Liability:	\$1,000,000
Workers Compensation and Employers' Liability:	\$1,000,000
Professional Liability:	\$1,000,000

Additional and primary insurance endorsements shall include City of Costa Mesa.

**8. SCOPE OF CONSULTANT SERVICES**

The City of Costa Mesa is seeking the services of a qualified firm to perform construction inspection for the City. The consultant shall reference the Caltrans' Construction Manual as the basis for the scope of services that may be required for the duration of the contract. The City's capital improvement program includes the following category of projects: Slurry seal, street maintenance, street widening, parkway and concrete maintenance, storm drain improvements, and traffic signal improvements. The purpose of this request for proposal is to contract with a consultant to provide construction management services and inspection services on an on-call basis for these projects.

The duties to be provided shall include, but are not limited to, the following:

- Become thoroughly familiar with the plans and specifications as they apply to the work to be inspected.
- Serve as the City's representative and liaison with the contractor during the construction



phase of the project to ensure that the construction conforms to plans, specifications and contract documents.

- Conduct daily observation of the work in progress. Maintain daily reports showing site and weather conditions; traffic control measures being taken; labor and equipment on site, labor and equipment in use and for what purpose. Maintain disputed work records.
- Recognize the work's conformity to the contract requirements.
- Anticipate problems in advance of their occurrence whenever possible.
- Recognize unacceptable work in the early stages and promptly report it to the Contractor.
- As a member of the construction team, perform all duties in a manner that will promote effective and efficient progress of the work.
- Approve materials and workmanship that meet the contract requirements notwithstanding, the purview and authority of the project manager, Deputy Inspector (construction materials testing and special inspection), or other regulatory authorities having jurisdiction.
- Coordinate testing activities.
- Review construction progress schedules and contractor's schedule of values.
- Attend job meetings.
- Review Contractor's payment requests and verify quantities of completed work for progress payments to Contractor.
- Verify and sign Contractor's daily extra work reports documenting force account (time and materials) work.
- Communicate with City staff to resolve construction problems.
- Issue verbal and written instructions to Contractor relative to non-compliance and safety violations, etc.
- Issue correction and compliance notices to the Contractor as necessary.
- Issue written instructions to Contractor regarding routine matters or confirming verbal instructions to the Contractor.
- Prepare daily inspection reports (inspection log or journal) documenting the Contractor's workforce, material and equipment delivered or used, a summary of construction activities, quantities of pay items, field problems, disputes or claims, and settlements, agreements or directions given to the Contractor.
- Prepare chronological photo journal and documentation of construction progress.
- Verify and enforce Contractor's compliance with the requirements of the Storm Water Pollution Prevention Program (SWPPP).
- Conduct pre-final inspection and prepare written punch list documenting incomplete or corrective work.

- Conduct final inspection to verify that all items on the punch list have been completed or corrected and make recommendations to City concerning acceptance.
- Coordinate preparation and submittal of as-built plans to the City upon finalization of work being inspected.

**Deliverable:**

At the close of the project, the consultant shall provide the City with all project related documentation including but not limited to the items listed in the scope of work (bullet items).

**Meetings:**

The consultant shall be available to meet with the CITY team to present and discuss daily construction activities, obtain feedback and CITY approval, and coordinate any other project related issues.

**9. CITY RESPONSIBILITIES**

The City of Costa Mesa will be responsible for the following:

- A. Advertising for bids and awarding of construction contracts.
- B. Furnishing plans and specifications.
- C. Providing a staff member to be project manager of the construction project.
- D. Controlling construction, and payment to the contractor.

**10. EXAMINATION OF CITY STANDARDS PRIOR TO SUBMITTING PROPOSAL**

Each Consultant must be fully knowledgeable of all City standards and the effort required to successfully complete the inspection of the contractor's work. Failure to do so will not relieve the selected Consultant of the obligations to carry out the contract.

**11. RIGHT TO REJECT ALL PROPOSALS**

- A. The City of Costa Mesa reserves the right to reject any or all proposals submitted, and no representation is made hereby that any contract will be awarded pursuant to this RFP or otherwise.
- B. The City also reserves the right to award a portion of work or combination thereof to either the most qualified consultant or to the second most qualified consultant.
- C. All costs incurred in the preparation of the proposal, the submission of additional information and/or any aspect of a proposal prior to award of a written contract will be borne by the Consultant. The City will provide only the staff assistance and documentation specifically referred to herein and will not be responsible for any other cost or obligation of any kind that may be incurred by the Consultant. All proposals submitted to the City of Costa Mesa become the property of the City.

**12. SUMMARY**

The City appreciates participation, and the intent of this RFP is to establish the minimum consultant services required. Prior to awarding a contract, all insurance documents must be submitted and approved.

**EXHIBIT B**  
**RESPONSE AND SCOPE OF SERVICES**

# ONWARD ENGINEERING

300 S Harbor, Suite 814 Anaheim, CA 92805

Thomas L. Banks, PE  
City of Costa Mesa  
Public Services/Engineering  
77 Fair Drive, 4<sup>th</sup> Floor  
Costa Mesa, CA 92628

December 13, 2013

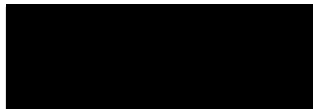
**Subject: Proposal to provide Construction Inspection Services for Capital Improvement Projects Fiscal Year 2013-2014**

Onward Engineering and its top-notch staff is pleased to submit our Proposal and fee schedule to provide Construction Management and Construction Inspection Services for Capital Improvement Projects during Fiscal Year 2013-2014 to the City of Costa Mesa. What separates Onward Engineering from the other firms is our focus on our team; because we believe that the success of our firm is centered on the quality of our staff. Our dedication and commitment will allow us to approach any project with a sense of continuity and seamless progression. We would like the opportunity to show the City of Costa Mesa what we are capable of, and are confident in our abilities to meet your needs. **Onward Engineering is the intersection between cost and quality, and the bridge between yesterday and the future.**

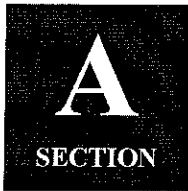
I, Majdi Ataya will be the Principal for this contract and the person authorized to enter Onward Engineering into agreement with the City of Costa Mesa. I will also act as the QA/QC Manager on this contract who will act in the city's best interest. We propose a seasoned team of Senior Inspectors with decades of experience working on projects of all sizes and scopes. Our team of Senior Inspectors are experienced, and they understand the nuances of efficient and successful field inspection and coordination. This means that the City of Costa Mesa can be comfortable knowing that no extra transition period will be necessary.

If selected, the Onward Engineering team will hit the ground running. What separates Onward Engineering from other firms is the motivation of our staff and the efficiency by which we communicate. We place a great emphasis on providing continuity and seamless progression. A commitment to excellence makes Onward Engineering more than an engineering and construction management firm; we want to be investors in the future of your City, and our vested interest in improving your infrastructure makes Onward Engineering the ideal candidate for this contract. If you have any questions regarding this proposal, our firm or any other items, please feel free to give me a call on my cell phone at (714) 457-2994 or send me an email at [mataya@oe-eng.com](mailto:mataya@oe-eng.com).

Sincerely,



Majdi Ataya, PE  
President



# FIRM PROFILE & INTRODUCTION

## Who we are

**"Our mission** is to provide the very best engineering and construction management services to public agencies by being a leader in innovation, efficiency, quality, and customer service; in doing so, we wish to improve the quality of life in the communities we serve."

**Type of Corporation:** "C" Corporation

**Year Founded:** 2004

**Number of Employees:** 20

**Office Locations:** 300 S. Harbor Blvd., Suite 814, Anaheim, CA 92805 (2,000 square feet)

**Services Offered:** Construction Management and Inspection

## The OE Difference

Onward Engineering (OE) is a firm committed to client satisfaction and personalized solutions. Our approach to preparing this proposal was to first become familiar with the project site, projected scope, and the City's vision. OE has visited the project limits to conduct a preliminary field investigation, carefully reviewed the City's RFP, and hand-picked our team and sub-consultant. This allows us to present a carefully constructed approach and scope, realistic schedule, and an inclusive and fine-tuned fee.

The level of detail we put into our proposal is a sampling of the quality the City of Costa Mesa will get from our team upon selection. The OE difference is in our commitment to the future of your City, our dedication to open lines of communication, and our promise to act as the City's advocate when interfacing with various stakeholders. In summation, the OE difference is in the OE mentality that quality can be attained without sacrificing cost-effectiveness; and by implementing a customized solution to fit your specific needs.

We understand that every project requires a unique approach. High-profile projects require a construction management and inspection team that will make the City a priority. OE is that firm, and our team will remain committed to the City for the life of the project. These types of projects are our bread-and-butter. We understand how to leverage our team's experience and new technologies to deliver success on this project. The goal is to advocate the City's best interest, to remain on top of the Contractor to guarantee that the City remains protected at all times and that the project proceeds on time, within budget, and in compliance with the contract documents. Our dedication to this approach has made us the consultant of choice for Cities like Irvine, Brea, Placentia, Diamond Bar, and La Habra Heights to name a few. Additionally, we are lauded for the quality of our Construction Management and Inspection staff by the County of Orange and for our attention to detail by OCTA—both of whom continue to rely on us to provide them with our consulting services during design and construction.

## Value Added Services

OE utilizes highly trained staff and promises to provide ingenuity in its engineering solutions. We believe it is imperative to provide the highest achievable quality of services from the proposal phase to project completion. To contribute to accomplishing our goals, OE has acquired invigorating resident engineers, detail oriented construction inspectors, and a qualified sub-consultant. As a firm, we also believe in offering clients' beneficial tools and resources which make their experience with OE remarkable and one of a kind. A partial list of innovative services we provide as a value added service without an additional charge include:

- 1. Project Hotlines:** OE establishes project hotlines to provide businesses, residents, and City staff 24/7 access to project personnel. This number can be used for general distribution. Callers will be greeted by a short, pre-recorded introduction requesting they dial an extension to gain insightful project information (street closures, schedule changes, street parking, etc.) prior to routing them to a specific project staff member. All calls are addressed by an actual person. This system is completely customizable and can change throughout the course of the project (contact person, disseminated information, etc. can be altered). This means that residents, businesses, visitors, and the like all stay informed over the course of the project. It is our belief that an informed public is a happy public.
- 2. Box Enterprise for Document Control:** OE has an efficient document filing system comprised of all documents and folders to ensure proper documentation. We map all of the city's standards, folder structure, and document formats to our cloud-based Box Enterprise account for implementation and to ensure transparency. This account allows secure, remote access and review of our entire filing system by the City of Costa Mesa to ascertain documentation and filing is done in compliance with project requirements. Each Costa Mesa staff member associated to a project can select a password allowing access to view, upload, or download project files such as daily reports, status reports, photo diaries, project schedules, and even billing information; without affecting the City's existing IT framework. Additionally, this flexibility allows the City of Costa Mesa access to project files anywhere at any time, and the City can provide access to select files (i.e. photos, diagrams) to City Council and media outlets. Our objective is to always keep the City abreast of the project.
- 3. Project Maps:** OE has the tools to build complex and dynamic maps for online access via computer or mobile device. These maps can include project information important to affected stakeholders and residents. Maps can be updated in real-time to keep the public informed. Phasing, detours, temporary parking, street closures, and basic project limit information can be depicted. Divulging pertinent details allows residents, visitors, and businesses the necessary resources to function as close to normal during construction; while decreasing frustrations, confusions, and stress sometimes associated with construction. Preserving quality of life is of high importance.
- 4. Resource Allocation & Billing:** OE thrives to be transparent and maintain integrity. We use BillQuick software to prepare invoices and report to the City, our billing system is all about transparency. This technology allows the City to request OE send billing statements at any time in the billing cycle, to guarantee the budget remains intact and allow the City to track the progression of completion at any phase of the project.

# B SECTION SCOPE OF WORK & PROJECT WORK PLAN

## Scope of Work

### Pre-Construction Phase

CM	Review PS&E to become familiar with the project. Will also review project storm water control plans. Initiation of project control system at this phase as well as reviewing and commenting on Contractor's preliminary schedule, submittals, and notifications to utilities. Arrange/conduct pre-construction meetings, answer questions from the City and businesses.	<p><b>Benefits:</b> Allows our team to convey all project-specific information and key items. Allows our team to gain a solid understanding of the project requirements and City goals.</p> <p><b>Deliverables:</b> Meeting agenda, notices, and minutes.</p>
IOR	Will review PS&E and become familiar with the Contractor's preliminary schedule while making suggestions to the Resident Engineer. Will also attend pre-construction meeting and answer questions as necessary.	

### RFI Coordination

CM	Review RFI's, samples, shop drawings, and coordinate with project designer for interpretation or clarification. Will also conduct meetings with the Contractor to discuss and resolve any RFIs	<p><b>Benefits:</b> Quick and accurate responses to Contractor to minimize delays.</p> <p><b>Deliverables:</b> Assist in RFI review.</p>
IOR	Provide assistance for background, clarifications, provide field information for necessary RFI information	

### Submittal Review

CM	Process/track RFI's, submittals, shop drawings, change orders, revisions, review estimates for reasonableness and cost effectiveness	<p><b>Benefits:</b> Ensures all contractor materials, methods and notices are in compliance with PS&amp;E.</p> <p><b>Deliverables:</b> Daily submittal review notes, stamped approved submittals, recommendations.</p>
IOR	File approved submittals in inspector's files during construction, ensure material compliance, and prepare/transmit contractor's correspondence.	

### Weekly Progress Meetings (Bi-Weekly)

CM	Schedule/conduct weekly progress and dispute resolution meetings as necessary to discuss contract issues, procedures, progress, problems, CCOs, submittals, RFIs, deficiencies and schedules. These meetings will be conducted weekly at the initial stages of construction and then may transition to bi-weekly.	<p><b>Benefits:</b> Allows discussion of milestones and issues to ensure compliance with the City's PS&amp;E.</p> <p><b>Deliverables:</b> Meeting Agenda, Minutes, and Weekly Statement of Calendar Working Days Report, and status reports.</p>
IOR	Attend weekly and bi-weekly progress meetings to communicate, coordinate and resolve any issues that may arise at the job site.	

**Project Schedule Review**

<b>CM</b>	Review schedule updates. Will compare work progress with planned schedule and notify Contractor of any slippages and get Contractor back on schedule. Will obtain weekly updates from Contractor that incorporates progress, weather delays, and CCO impacts. Will assist the City in negotiating time extensions and submit monthly progress reports to the City with a narrative on the progress and complete Earned Value Analysis.	<p><b>Benefits:</b> Provides a solid baseline schedule for planning and analysis of project during the construction phase.</p> <p><b>Deliverables:</b> Construction schedule updates.</p>
<b>IOR</b>	Review construction progress schedules regularly, verify schedules are on track, identify deviations, and ensure corrective actions are taken to bring project back on schedule.	

**Community Coordination**

<b>CM</b>	RE shall serve as primary contact and authority for this task. Respond to questions and concerns of community, and coordinate with IOR to ensure project update signs. Assist City with coordinating services of other consultants. RE will review Public Notices to ensure accuracy and to avoid business impacts. RE will notify the City's Project Manager with any significant issue. RE will work with IOR to compile a log of all queries and discussions with business community.	<p><b>Benefits:</b> Minimizes construction impact to residents and businesses.</p> <p><b>Deliverables:</b> Community Coordination Records to include business name, contact, phone number, address, discussion notes including the date of discussion, and any action taken.</p>
<b>IOR</b>	Update signs within project limits. Coordinate with contractor safe and acceptable access to adjacent businesses during construction. Coordinate mitigation of construction impacts with all necessary parties. IOR will ensure all Public Notices are distributed to each business affected by the project.	

**Construction Inspection**

<b>CM</b>	Will work closely with the Inspector and review Daily Construction Reports (DCRs) provided by Inspector.	<p><b>Benefits:</b> Ensures active monitoring and documentation of jobsite and project progress. Also, provides notes on labor, weather, progress, key items, and field observations. Clear documentation of existing condition, progress of construction, and final field conditions.</p> <p><b>Deliverables:</b> Daily Reports, Weekly Statement of Working Days, Daily Photo Diary, Raw image files &amp; video.</p>
<b>IOR</b>	Will provide continuous inspections so project is constructed according to specifications. In anticipation of night time work, OE will provide two inspectors to be utilized when night time work is necessary. IOR will also prepare DCRs and WSWD, monitor compliance with City's Construction Demolition & Recycling Ordinance, review soil compaction and materials testing certifications of compliance (COC), and coordinate with City regarding quality of work completed. Take photos and video prior, during, and after construction. IOR will prepare a Daily Photo Diary which will be available with the DCR in real-time to the City. Will prepare field blue-line set of drawings to incorporate Contractor record drawing markups. Additionally, will assist in monthly progress payment recommendations by making measurements of bid items.	



**Traffic Control**

<b>CM</b>	Will review and make sure traffic control procedures are being implemented in accordance to plans and coordinate with IOR to ensure proper implementation. RE will check to ensure compliance with Caltrans MUTCD and all other requirements.	<p><b>Benefits:</b> Allows us to maintain safe traffic flows during construction.</p> <p><b>Deliverables:</b> Traffic Control Notes</p>
<b>IOR</b>	Will ensure that all OE personnel are wearing white hard hats, OSHA approved vests, and rubber soled- shoes at all times on the jobsite. All OE personnel assigned to this project have had safety training for work on and near highways. Provide inspection of traffic-related work and installs, monitor traffic control to ensure pedestrian/vehicular safety, minimal disruption, safe access, and traffic control, provide inspection of all traffic-related work.	

**Job Safety Compliance**

<b>CM</b>	Establish and implement job safety procedures in compliance with CAL-OSHA requirements, and monitor Contractor's compliance with established safety program per Federal and State requirements. Will also ensure that awareness of safety and health requirements and enforce applicable regulations and contract provisions to ensure protection of the public and project personnel.	<p><b>Benefits:</b> Ensures a safe and successful construction project from inception to completion. Also, ensure full federal, state and local safety standard compliance.</p> <p><b>Deliverables:</b> Safety Infraction Reports</p>
<b>IOR</b>	Establish and implement job safety procedures in compliance with CAL-OSHA requirements, monitor contractor's compliance with established safety program, respond to deficiencies and hazards, and investigate, report on accidents, observe construction safety, public safety and convenience, and report discovered problems to City.	

**Change Orders**

<b>CM</b>	Establish, implement and coordinate systems for processing all contract change orders. Review and evaluate, via an independent cost estimate, cost proposals submitted by the contractor for all contract change orders. Will negotiate CCO and prepare using City's standard format and give recommendations to City. Quantity and cost analysis will be performed for negotiation of CCOs. Will also analyze any additional claims and perform claims administration including coordinating, monitoring, logging, and tracking claim status. Will also evaluate cost reduction incentive proposals and provide recommendations to the City.	<p><b>Benefits:</b> Provides clear documentation review and recommendation for change orders to maximize value of contract.</p> <p><b>Deliverables:</b> Change Order Notes and Recommendations</p>
<b>IOR</b>	Maintain data for change orders and record information regarding time of dispute, time of notification by contractor, and action taken by inspector.	

**Progress Payments**

CM	Track quantities of work completed for progress payment, develop & implement procedures for review & process of progress payment applications, assist City with review, certification, and process of payments. Will prepare monthly payment requests and negotiate differences with the Contractor as well as process payment through the City of Costa Mesa Project Manager.	<p><b>Benefits:</b> Provide accurate measurements of work completed by Contractor</p> <p><b>Deliverables:</b> Ensure accurate records are kept of actual quantities installed, provides back-up for quality and cost of work.</p>
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**Funding Compliance**

CM	Comply with federal and grant funding requirements and assist in preparing/processing reimbursements	<p><b>Benefits:</b> Ensure all funding remains available during construction</p> <p><b>Deliverables:</b> Material Required Grant Forms/Packages and Notes</p>
IOR	Monitor federal and state stipulated field conditions for compliance of all necessary grant items	

**Labor Compliance**

CM	Establish procedures and monitor compliance with Prevailing Wages, and ensure compliance with Federal Labor Laws and the Davis-Bacon Act	<p><b>Benefits:</b> Ensures full grant funding compliance</p> <p><b>Deliverables:</b> Contractor Certified Payroll Records, RE Payroll review Notes, Employee Interview Forms, Interview reports</p>
IOR	Conduct field construction employee interviews; ensure contractors submit certified payroll reports and that labor/hours reported by Contractor match DCRs. Verify & document job-site posting of wage rate information & labor compliance posters	

**Construction Documentation**

CM	RE will establish job control documents including DCRs, weekly and bi-weekly status reports, monthly construction payments, material receipts, weigh certificates, material submittals, weekly statement of working days, construction change orders, and certified payroll records and labor compliance documents. Our Inspector will maintain coordination with the RE for all project records, including but not limited to; DCRs, correspondence, submittals, CCOs, progress payments, Lab and Field Test Reports, Materials Delivery Tickets and Compliance Certification, Progress Reports, Progress Photos, and Meeting Minutes, guarantees, certifications, affidavits, leases, easements, deeds, O&M manuals, warranties, and all other necessary documents. This information is made available to the City in real-time using our cloud-based system Box Enterprise.
IOR	

**Final Walkthrough & Inspection**

CM	Recommend and conduct final inspection with City staff and project design consultant.	<p><b>Benefits:</b> Confirmation to all stakeholders of final completion of work.</p> <p><b>Deliverables:</b> N/A</p>
IOR	Conduct final inspection and close-out encroachment and construction permits.	

**As-Built Plans**

<b>CM</b>	Maintain "As-Built" Work Records and activities during construction. Transmit Contractor and IOR red-lines for incorporation into As-Built Plans, review plans to ensure accuracy and quality, and deliver as-built & electronic drawings to City.	<p><b>Benefits:</b> Representation and documentation of field changes made during construction and accurate records.</p> <p><b>Deliverables:</b> IOR and Contractor Red-Lines, designer coordination records, final as-built documentation</p>
<b>IOR</b>	Will review the Contractor's as-builts daily and ensure the Contractor keeps these records up to date throughout construction. Will coordinate preparation and submittal of as-builts.	

**Punch Lists & Non-Compliance Items**

<b>CM</b>	Issue preliminary & final punch list and monitor and follow-through with contractor until completion of punch list items. Review and distribute IOR notes regarding non-compliant work items and recommend mitigating procedures for fixing non-compliance. RE will also finalize the bid items, claims, change orders, punch list items, and correct shop drawings. Additionally, will oversee the completion of record drawings.	<p><b>Benefits:</b> Clear communication and records to Contractor. All non-compliant items are noted and fixed prior to notice of completion.</p> <p><b>Deliverables:</b> Preliminary and Final Punch lists, Inspector's Non-Compliance Notice, Non-Compliance Notes</p>
<b>IOR</b>	Prepare in-progress punch lists at completion of each project phase until completion. Direct and notify contractors about non-compliance and correct compliance problems as discovered.	

**Completion Recommendations**

<b>CM</b>	Evaluate completion of work and recommend final inspection. This includes preparing Report of Expenditures Checklist and necessary attachments. RE will also provide support for construction claims analysis and litigation and will be available for any audits including internal City audits.	<p><b>Benefits:</b> Ensures that work items completed as specified.</p> <p><b>Deliverables:</b> Final Completion Recommendation, Final Report of Completion</p>
<b>IOR</b>	Provide notes and concurrence to RE regarding final completion of all field work.	

**Final Payment Request**

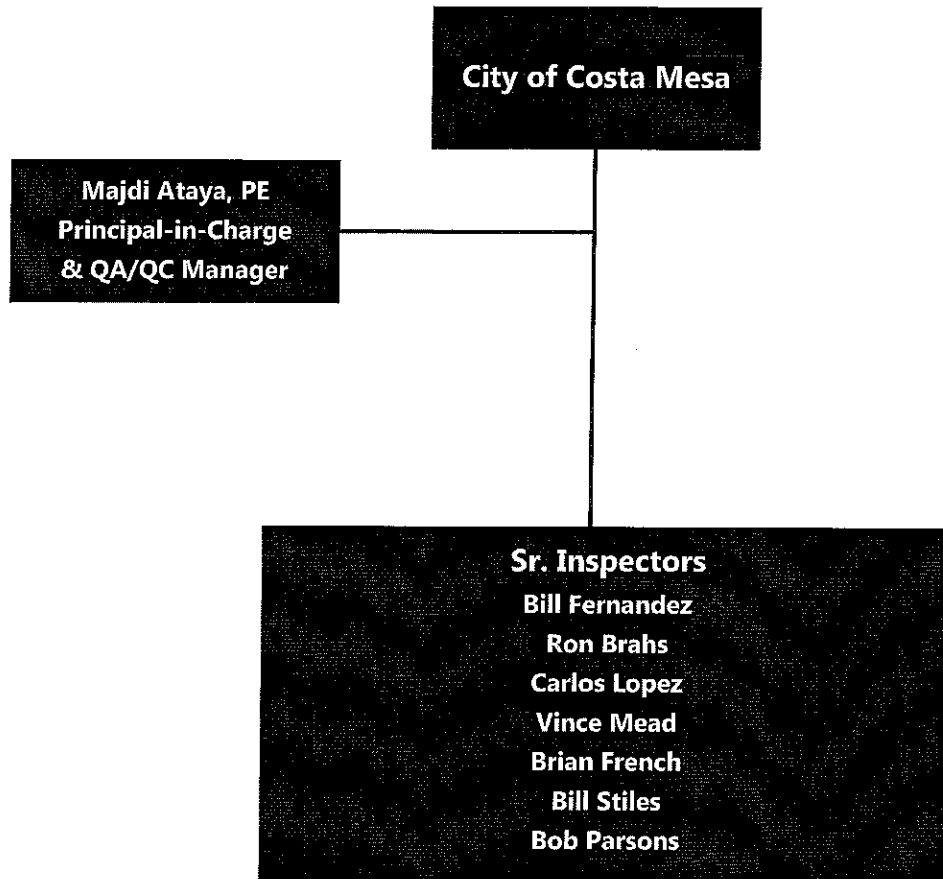
<b>CM</b>	Review and process request for final payment and release retention. Develop a reasonable cost control system, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes and identify variances between costs.	<p><b>Benefits:</b> Ensure payment is provided to Contractor, organized cost tracking data for future reference.</p> <p><b>Deliverables:</b> Final Payment Recommendation</p>
<b>IOR</b>	Confirm final field quantities to RE. IOR will provide complete measurements and calculations to administer progress payments and make recommendations for payments.	



# PROJECT STAFFING

## Organizational Chart

We are very serious about this proposal, and in an effort to show our commitment, we have proposed the following hand-picked team for this project. Resumes for our proposed team can be provided upon request. No team member will be replaced without the expressed consent of the City of Costa Mesa.



**D**

## SECTION

**OE FIRM QUALIFICATIONS****Firm Experience****ANTONIO PARKWAY WIDENING PROJECT, County of Orange [\$25 million completed 2/2013]**

OE provided construction support and inspection services to the County of Orange on the high-profile Antonio Parkway and La Pata Avenue Widening project. The \$25 million project spanned 1.5 miles, from Ladera Ranch to 1000 feet south of Ortega Highway, and included 900 LF of bridge-work across San Juan Creek. Antonio Parkway was widened from 4 to 6 lanes. The bridge was widened by 40 feet to accommodate the 2 additional lanes of traffic. Bridgework included parkway improvements, a raised median, channel bank revetment at the south abutment, compaction grouting, and structural testing. Roadway and bridge widening occurred concurrently and included grading and cement-treated soil, 3,691 LF of RCP storm drain, rip-rap for environmentally-friendly drainage filtering, dry utility installations, 4,993 PVC pipe, utility conduits, 4 fire hydrants, traffic signal improvements and loops, signing and striping, video detectic, and a Class I designated bike lane with special bicycle signal; loops. The construction also included 448 LF of CIDH pile retaining wall with 42,000 lbs. of steel reinforcement. The work also included installation of domestic, reclaimed, and non-potable waterlines as well as sewer installation and mainline trunk re-routing. The project limits included a dewatering and affluent treatment system on-site that handled one-million gallons per day. The existing bridge was retrofitted with sidewalk. Additionally, the bridge deck was picked up on one end to adjust crossfall.

**ATLANTIC AVE. & FIRESTONE BLVD. WIDENING PROJECT, South Gate [\$8 million completed 12/2013]**

OE provided construction management and inspection services for this project which was funded through Measure R, Metro, and other state funding sources, which will requires the project to be conducted, organized and reported per the Caltrans LAPM. The project limits included two arterial streets: Atlantic Avenue from Firestone Blvd to Patata St. (~1,300 LF) and Firestone Boulevard, from Dorothy Avenue to Atlantic Ave. (~2,200 LF). The project goal was to provide traffic congestion relief and improve public services. Atlantic Avenue and Firestone Boulevard were widened at all four corners. Additionally, roadway and public amenity improvements were completed. The project also called for sewer, storm drain, and extensive water system improvements. Traffic signals were a key component of this project. Community coordination was a great focus on this project. OE coordinated with stakeholders to ensure that complaints were minimized. This project also had a heavy environmental component. All mitigation measures listed in the EIR will be closely monitored and reported during the life of the construction project. Of greatest concern will be storm water runoff contamination and prevention. Finally, the project called for extensive night work and periods of 24/7 inspection where OE was responsible for providing round-the-clock inspection and construction administration.

**EDINGER BRIDGE WIDENING OVER SANTA ANA RIVER, County of Orange [ONGOING]**

OE provided inspection services to the City of Orange on the widening of the bridge from 52 feet to 104 feet to accommodate traffic lanes, sidewalks, and bicycle lanes. In addition, as a transition between the bridge and the existing roadway, approximately 500 feet of Edinger Avenue would be widened to 84 feet west of the bridge, and 78 feet east of the bridge. The project also includes 2 retaining walls, as well as the installation of a sound wall. The inspector coordinated extensively with the City of Santa Ana, City of Fountain Valley, Edison, and other various utilities for relocations. The inspector not only kept the project on schedule, but was able to move the project a month ahead of schedule.

**JAMBOREE & I-5 WIDENING PROJECT, City of Irvine [\$7.3 million completed in 1/2012]**

OE provided project management and design review services to the City of Irvine on this \$7.3 million dollar project. The project scope included widening Interstate 5 (I-5) northbound and southbound ramps to relieve traffic congestion, and widening Jamboree from one-tenth of a mile west of Michelle Drive to El Camino Real. Construction included additional retaining walls, landscaping, and irrigation as well. OE assisted the City in replacing the prime contractor on the project, including filing all necessary documentation for termination of contract, transferring ownership of the project to the bond company, and bringing a new prime contractor to the job. OE also assisted the City in dealing with numerous liens placed on the project due to the contractor's non-payment of wages and union dues. OE conducted a feasibility study on the plans while construction was stalled, and made recommendations for improving design inconsistencies. Our role was complete once a new prime contractor was brought on and smooth forward progress had been demonstrated by the contractor.

**TELEGRAPH RD. ROADWAY & MEDIAN IMPROVEMENTS, Pico Rivera [\$4 million completed in 11/2013]**

The Telegraph Road Landscape Median Improvements Project [City Project No. 21232 and Federal Project No. HSIPL-5351 (022), EA 07-933969L] is funded by Federal Highway Safety Improvement Program (HSIP) and Proposition C. The construction cost was \$2.1 million dollars. This project included median, landscape, irrigation, roadway, parkway, traffic signal, and peripheral improvements. The work was conducted on the east-west corridor of Telegraph Road, a residential and commercial major thoroughfare accommodating approximately 26,000 vehicles per day and shared with the City of Downey. The work on Telegraph Road from Lakewood/Rosemead Boulevard to Parsons Boulevard included excavation, 21,349 square feet of pavement and concrete removal under the medians, construction of 4,799 square feet of a concrete dowel on median curb, construction of 430 square feet of 4" sidewalk, curb and gutter construction, installation of concrete spandrel, 17 curb ramps, and 21 truncated dome mats. In addition, the work entailed traffic signal modifications at Telegraph Road and Lakewood/Rosemead Boulevard, Telegraph Road and Serapis Avenue, and Telegraph Road and Parsons Boulevard. An alternate bid added enhancement/beautification items east from the end of curb at Lakewood Boulevard and Telegraph Road to Parsons Boulevard. This included construction of pervious concrete pavers, fine grading, installation of automatic irrigation and a moisture barrier, and placement of 16,976 of landscape mulch, 1,984 shrubs, 84 box trees, and 47 brown trunk palms.

Additionally, the work under this alternate item entails all roadway improvements including 136,512 square feet of 2.5" cold mill, ARHM overlay totaling 3,147 tons, and 56,342 square feet of removal and reconstruction of 9" on Telegraph Road and 416 square feet of remove and replace 4" over 8" aggregate at the intersection of Telegraph Road and Lindell Avenue. This bid item also added replacing survey monuments and adjustment of water valve box and manholes and all pertinent signing and striping items. Intersection pavement improvements at Lakewood Boulevard and Telegraph Road included 11,180 square feet of 2.5" cold mill and ARHM overlay totaling 182 tons. The project also covered pavement improvements on Lakewood Boulevard from Telegraph Road to Vista Del Rosa Street including 48,308 square feet of 2" cold mill with 628 tons of ARHM overlay, adjusting water valve box, manholes, traffic signing and striping, and 14 traffic loop detectors (Type "E") on Lakewood Boulevard.

#### **ROSEMEAD BLVD. REHABILITATION PROJECT, Pico Rivera [\$1.5 million completed in 11/2012]**

OE provided construction management services to the City of Pico Rivera for the Rosemead Boulevard Rehabilitation Project, funded by STPL-L, SAFETEA-LU, Demo TEA-21 and Proposition C funds. The project spanned Rosemead Boulevard, from Telegraph Avenue to Washington Boulevard, and included two railroad crossings and access to the I-5 within the project limits. The scope included 46,700 SF of localized AC R&R, cold milling and ARHM overlay, decorative rock in median islands, 1,975 SF of driveways approaches, 13,100 SF of sidewalk, 655 LF of curb and gutter, upgrading 19 ramps to ADA-compliance, 24 loops, and signage and striping. OE has a thorough knowledge of the LAPM, and effectively managed the necessary documentation and filings to ensure project funding.

#### **STUDEBAKER RD. & FIRESTONE BLVD. REHABILITATION, Norwalk [\$1.8 million completed in 2/2011]**

OE provided construction management and inspection services for this ARRA-funded City of Norwalk project. The project spanned 3 miles on Studebaker Road, from Alondra Boulevard to Cecilia Avenue at the north City limits, and 0.9 miles on Firestone Boulevard, from Hoxie Avenue to Imperial Highway. Studebaker Road is a 4 lane arterial with raised medians for the entire 3 mile stretch. Firestone Boulevard is an arterial 5 lane roadway providing access to the I-605 freeway at Hoxie Avenue. Studebaker Road parallels the I-605 freeway, and serves as an alternate route for local traffic, creating high traffic volume during peak traffic hours and making it a great safety concern during the project. The scope included grind and overlay, upgrading ramps to be ADA-compliant, rebar-reinforced median curb replacement, curb and gutter. OE coordinated with the contractor for the grind and overlay to be completed at night due to high volumes of traffic. Proximity to Caltrans Right-of-Way required the contractor to obtain a rider permit and close coordination with Caltrans was necessary to ensure ARRA and all other required documentation was maintained throughout the project. Careful oversight for federal funding regulations was a major focus on this contract, and the concluded with passing a Caltrans audit.

**TRAFFIC SIGNAL MODIFICATIONS & INSTALLATION PROJECT, Norwalk [\$215K completed in 2/2009]**

OE provided inspection services to the City of Norwalk on this traffic signal modification and installation project. Improvements were made at the intersection of Norwalk Boulevard and Cheshire Street, and at Rosecrans Avenue and Greenstone Avenue. The scope included installing all new mastheads and signals, push-button signals, control cabinets, and upgrading ramps to meet ADA-compliance at all four corners of the intersection. OE ensured all pedestrian access routes through the intersection met ADA compliance as well, making recommendations for controller and signal locations during construction. The project also included simultaneous inspection of traffic signal modifications on Bloomfield Avenue at Foster Road/Goller Avenue. The scope included installing all new mastheads and signals, push-button signals, control cabinets, upgrading ramps to meet ADA-compliance, and shortening median island noses to provide unobstructed crosswalk access. The City had received numerous complaints from nearby school personnel and parents about lack of safety and wheel-chair access on this intersection. OE communicated with the school throughout the course of the project to ensure they felt the City was addressing their needs.

**IMPERIAL HIGHWAY REHABILITATION PROJECT, Lynwood [\$750K completed in 2/2011]**

OE provided construction management and inspection services on this high profile project for the City of Lynwood. The 1 mile project ran from Atlantic Avenue to the city limit, a section with high traffic flow due to tie-in with the I-710. The project included grind and overlay of 0.5 miles of roadway, portions of full-depth reconstruction, ornamental fence and lighting rehabilitation, median curb, decorative landscaping, median irrigation, and a new city welcoming monument. Work also included constructing new concrete curbs to replace the existing plastic channelizers located on the centerline between Atlantic Avenue and St. James Street. During the course of construction, our staff recognized a need to extend the length of the landscaped median island on Imperial Highway between Atlantic Avenue and Wright Road to improve traffic safety on the street. Paving was completed at night on several roads, including the I-710 ramps, due to high traffic volumes. Lane closures and pavement work had to be coordinated with Caltrans and a Caltrans contractor doing work at the I-710 freeway.

**LINCOLN BOULEVARD REHABILITATION PROJECT, Santa Monica [\$2.8 million completed in 11/2013]**

OE provided construction management and inspection services on this project for the City of Santa Monica. The project limits were on Lincoln Blvd, from the I-10 to the south Santa Monica City limits. The estimated cost was \$2.8 million funded by Federal Transportation Grant. This portion of Lincoln Boulevard is an undivided arterial roadway which provides access through commercial portions of Santa Monica, intersecting other major arterials such as Pico Blvd. and Ocean Park Blvd., while also serving as a primary travel route through the City, carrying traffic to multiple points including Marina Del Rey, Pacific Palisades, and LAX. The work included very extensive coordination with businesses and stakeholders. Construction took place at night, and required careful coordination and cleanup.



**HACIENDA RD. & EAST RD. REHABILITATION PROJECT, La Habra Heights [\$531K completed in 6/2010]**

OE provided design, construction management, and inspection services for 4.16 miles of residential roadway. The project was funded by the ARRA and spanned Hacienda Road, from the north city limits to Avocado, and East Road, from Hacienda Road to Fullerton Road. The scope included slurry seal for most of the roadway, with patches of 16-inch R&R and grind and overlay; providing erosion control by re-compacting an adjacent slope and installing riprap; installing metal guard railing and traffic loops; and improving drainage with new rolled curb and gutter, v-ditch installations, and relocating several existing utilities. With the roads providing single lane access to and from adjacent neighborhoods, careful attention was given to project phasing and traffic control design. During the bid and construction phases, OE ensured the project adhered to the Caltrans Local Assistance Procedures Manual and took care of all Caltrans paperwork required for E-76 approval and closeout. E-76 permits set strict documentation and submittal schedule requirements for the pre-bid phase, as well as strict labor compliance documentation requirements for closing out a project—to ensure funding remains available.

**FHWA ROADWAY REALIGNMENT & STABILIZATION, La Habra Heights [\$1.8 million completed in 3/2010]**

OE provided design, construction management, and inspection services for road realignment and slope stabilization along three stretches of roadway. Funded through the FHWA Relief Program and designed as three separate projects, these projects took on a greater complexity for bidding and construction when they were combined as one. The slope supporting these sections of Hacienda Road and Fullerton Road was failing and needed to be stabilized. This project also required environmental documentation (PES) and was governed by the E-76 permitting process. The segment of Hacienda Road Upper was 1,200 LF. OE designed a comprehensive solution to stabilize the slope for the long-term. The scope included a new storm drain system, including over 500' of 36-inch and 18-inch RCP, 5,800 LF of swale channeling, shotcrete-lined swales, drainage inlets, installing nearly 13,000' of soil nails and 5,100' of soil nail wall face, 1,885 LF of micro-pile installation, and 26,500 SF of hydro-seeding for new vegetation in order to gain environmental approval. The segment of Hacienda Road Lower was 150 LF. The final scope included installing 78 ballistic soil nails, 115 Percussion-driven Earth Anchors (PDEA), 3,400 SY of turf reinforcement, and constructing 75 LF of AC dike. The launched soil nails were specifically designed for existing soil bearing capacity and existing utility clearance. Additionally, the work on Fullerton Road included 280 LF. The scope entailed installing drainage inlets, gutter depressions, grating, and 12 separate 24-inch CMB risers to improve water flow, cold planing, cap of existing AC, and installing new traffic striping. Right-of-way restrictions required the junction structure was custom designed to avoid the need for any encroachment permits.

**References**

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**EXHIBIT C**  
**FEE SCHEDULE**

**Onward Engineering**  
Schedule of Hourly Rates  
Rates Effective December 1, 2013

<b>FEE SCHEDULE</b>	
Project Manager/Construction Manager	\$100/hour
Senior Construction Inspector	\$80/hour

Note: The aforementioned hourly rates are fully burdened to include mileage. Scheduled overtime will be performed at 1.5 times the hourly rate to apply to the inspector only.

This task order not to exceed \$40,000.

**EXHIBIT D**

**CITY COUNCIL POLICY 100-5**

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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;

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- 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;

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- 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.