

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
CADD MICROSYSTEMS, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 5th day of May, 2022 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and CADD MICROSYSTEMS, INC., a Virginia corporation ("Consultant").

WITNESSETH:

A. City proposes to utilize the services of Consultant as an independent contractor to provide Bluebeam consulting services, as more fully described herein; and

B. Consultant represents that it has that degree of specialized expertise necessary and holds all necessary licenses to practice and perform the services herein contemplated; and

C. City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. No official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, 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 Statement of Work, attached hereto as Exhibit "A" and incorporated herein. City and Consultant acknowledge and agree that this Agreement governs Consultant's "hourly consulting" services only and that the Bluebeam software and technical support are governed by a separate Studio Prime License and Subscription agreement.

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

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;

- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

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

1.5. Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

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

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

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

1.9. Operating System/Base Conditions.

- (a) City assumes all responsibility for the correct and proper operating system installation on hardware. Consultant will not be responsible for any delays caused to a project due to incomplete, incorrect or failures related to client hardware, operating systems, and/or network situations.

- (b) City shall provide Consultant personnel with administrative privileges on servers and/or workstations as necessary for the performance of Consultant's duties.
- (c) City will back up all data and content prior to any migration/installation. Consultant will not be responsible for loss of data.
- (d) City will have software and licenses available for deployment.
- (e) City will provide Consultant with a list of any customization items that will be migrated to newer software versions, prior to service engagement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. City agrees to pay Consultant at a rate of One Hundred Seventy-Five Dollars (\$175.00) per hour. Consultant may invoice its time, whether provided on site at the City or through telephone support, in one-quarter (1/4) hour increments. Consultant's total compensation shall not exceed Three Thousand Five Hundred Dollars (\$3,500.00).

2.2. Minimum Charges; Travel Expenses. City acknowledges and agrees that Consultant's minimum charge for services provided from Consultant's offices is two (2) hours and that the minimum charge for services provided on site at the City is eight (8) hours. City further acknowledges and agrees that Consultant will charge for travel expenses, including, but not limited to hotel accommodations, air travel and meals, per diem, if the distance between Consultant's nearest office and City is greater than seventy-six (76) miles. Notwithstanding the foregoing, Consultant shall not incur any travel expenses without City's prior written approval.

2.3. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Statement of Work unless the City Manager or designee, 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.

2.4. Method of Billing. Consultant may submit invoices to the City for approval on a monthly basis. Each invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. City shall pay Consultant's invoice within thirty (30) days from the date City receives said invoice. 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.

2.5. 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 from the Effective Date until three (3) years after termination of this Agreement.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall

commence within five (5) days from the Effective Date of this Agreement. 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, pandemics, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party (each, a "Force Majeure Event"). If a party experiences a Force Majeure Event, the party shall, within five (5) days of the occurrence of the Force Majeure Event, give written notice to the other party stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect. Any suspension of performance shall be of no greater scope and of no longer duration than is reasonably required and the party experiencing the Force Majeure Event shall use best efforts without being obligated to incur any material expenditure to remedy its inability to perform; provided, however, if the suspension of performance continues for sixty (60) days after the date of the occurrence and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure Event, the parties shall meet and discuss in good faith any amendments to this Agreement to permit the other party to exercise its rights under this Agreement. If the parties are not able to agree on such amendments within thirty (30) days and if suspension of performance continues, such other party may terminate this Agreement immediately by written notice to the party experiencing the Force Majeure Event, in which case neither party shall have any liability to the other except for those rights and liabilities that accrued prior to the date of termination.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue through April 30, 2023, 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 based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to

Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

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

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

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

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by

the Consultant.”

- (b) Notice: “Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.”
- (c) Other insurance: “The Consultant’s insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

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

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

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

6.0. GENERAL PROVISIONS

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

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

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

Agreement.

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

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

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery 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, and (b) 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:

CADD Microsystems, Inc.
6361 Walker Lane #400
Alexandria, VA 22310
Attn: Melissa Hall

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Daniel Inloes

Courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Dept. | Purchasing

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 "B" and incorporated herein. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

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

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

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without

City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in the performance of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or the Statement of Work, which shall be of no force and effect.

6.10. Disclaimer of Liability and Warranty.

- (a) IN THE EVENT OF HARDWARE OR SOFTWARE MALFUNCTION, CITY'S RECOURSE IS DEFINED BY THE WARRANTIES OF THE ORIGINAL MANUFACTURER OF THE HARDWARE OR SOFTWARE. CONSULTANT MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (b) In no event shall Consultant be held liable for any damages resulting from loss of data, loss of profits, loss of use of products or equipment, or for any incidental or consequential damages, even if advised of the possibility of such damages. City's right to recover damages caused by Consultant, through fault or negligence, shall be limited to moneys actually paid by Consultant for the specific services involved. This limitation of Consultant's liability shall apply regardless of the form of action, whether in contract or tort including negligence, but shall not apply to Consultant's indemnification obligations as set forth in Section 6.9 of this Agreement.

6.11. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or

employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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

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

6.13. Recruitment. Consultant and City agree that during the term of this Agreement and for a period of one (1) year after the termination or expiration of this Agreement, neither party shall hire, engage, or attempt to hire or engage, any individual who is, or has been at any time during the term of this Agreement, an officer, director, employee of the other during the prior twelve (12) months. This Section shall not preclude either party from hiring, engaging or contracting with any person responding to a general advertisement for employment not directed at or targeted towards such person without having been directly solicited by a representative that party.

6.14. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.15. 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.

6.16. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and 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, pursuant to this Agreement 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.

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

6.18. 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.

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

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

6.21. 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.

6.22. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.23. 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.

6.24. 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.

6.25. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. 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.

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

6.27. 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.


6.28. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.29. 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.

6.30. 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.

CONSULTANT




Signature

Date: 5/14/2022

Melissa Hall V.P. of Corporate Development
[Name and Title]

CITY OF COSTA MESA



Carol Molina
Purchasing Officer


Date: 5/23/2022

ATTEST:

Brenda Green 6/3/2022
Brenda Green
City Clerk



APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

Date: 6/2/22


APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 5/30/22

APPROVED AS TO CONTENT:



Daniel Inloes
Project Manager

Date: 5/31/2022

DEPARTMENTAL APPROVAL:



Jennifer Le
Economic and Development Services
Director

Date: 5/31/22

EXHIBIT A
STATEMENT OF WORK

// HOURLY ASSISTANCE

// STATEMENT OF WORK

// PREPARED BY

CADD Microsystems, Inc.

www.caddmicrosystems.com

800.526.2233



// DATE

12.29.20

// VERSION

Version 2.2

Our Mission: we provide value to our clients so our clients value us.

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INTRODUCTION

CADD Microsystems (CADD) employs a team of professional consultants with years of industry experience. These consultants provide expert advice on many aspects related to Autodesk, Bluebeam, and FM:Systems products and their related workflows.

Our clients sometimes need assistance from our consultants related to these products, delivered in a way that provides maximum flexibility to adapt to their needs. CADD provides this through our **Hourly Assistance** service offering, which is designed to help you meet your desired business outcomes.

Hourly Assistance is ideally suited when:

- The exact tasks or deliverables are unknown, too complicated, or difficult to define
- A quick turnaround is necessary to get started
- A flexible timeframe or schedule is needed
- You want peace of mind that you have expert help available

This document describes the consulting tasks available to you when you utilize CADD's consultants through an **Hourly Assistance** engagement. It provides details on these tasks as well as tips for how you can take full advantage of this service. While it is intended to answer any questions you may have related to this service, please feel free to reach out to your sales representative if you ever have any others or would like to discuss anything in more detail.

SCOPE

OVERVIEW

The following sections describe the tasks your consultant can perform with your Hourly Assistance consulting order. This includes detailed descriptions of each task as well as descriptions of tasks not included with this service.

TASKS INCLUDED

EDUCATION / INSTRUCTION

CURRICULUM DEVELOPMENT

Develop a curriculum and tailored outline for a custom training class, including creating an instructor outline, building datasets, and authoring a student training guide.

PRESENTATIONS

Perform lecture-style presentations to a group that may include product features and overviews, lunchtime educational sessions, roundtable discussions, or targeted topics.

ONE-ON-ONE

Provide personalized instruction for individuals that may include foundation or gap training, continuing education, or questions and answers.

RECORDED TRAINING

Create recorded training sessions that can be used for on-demand access by your teams. Develop and record classes for an online learning management system, such as CADD's own CADD Community online portal powered by Global eTraining.

PROJECT TEAM ASSISTANCE

OVER-THE-SHOULDER/OVER-THE-WEB

Assist your project teams with software and project related activities that may include questions and answers, step-by-step procedures, best practices guidance, or software instruction.

HOURLY ASSISTANCE FROM CADD // STATEMENT OF WORK

MODELING / DRAFTING

Perform modeling or drawing services that may include updating models/drawings based on your direction (not including construction/contract documents), converting file formats or versions, cleaning up files, or updating files to match your standards.

COORDINATION / INTERFERENCE MANAGEMENT

Perform BIM model coordination tasks which may include aggregating and aligning models, configuring necessary clash sets, performing clashes, reviewing results with your teams, and leading coordination meetings.

STANDARDS AND CONTENT

STANDARDS

Develop or update standards for your organization that may include template files or processes, procedures, and workflows.

CONTENT

Create files and loadable content based on your standards or requirements that may include items for Revit families, AutoCAD blocks, Bluebeam toolboxes, or FM:Interact reports.

REVIEWS AND ASSESSMENTS

REVIEWS

Perform reviews of projects (related to best practices and standards compliance), documented standards, or other files and then provide detailed observations and expert recommendations.

ASSESSMENTS

Perform assessments of your current workflows and procedures and then provide detailed observations and expert advice on ways to improve.

DOCUMENTATION

PROCEDURES / HOW-TO'S

Created detailed documents showing step-by-step procedures for critical tasks related to software or process.

ONLINE / INTRANET

Create content for web, Intranet, or Wiki sites to house your documented standards and procedures.

PRODUCT MAINTENANCE

INSTALLATIONS AND LICENSE MANAGEMENT

Assist your IT team with ensuring your end users have the proper software installed and licensed, which may include procuring license files, installing and configuring a license manager, creating installation deployments, and performing installations.

SOFTWARE MAINTENANCE

Perform updates to your installations that may include applying updates/hotfixes, installing Autodesk, Bluebeam, and FM:Systems add-ons and plug-ins, or upgrading to newer versions.

VERSION UPGRADES

Develop a migration plan and then perform the tasks necessary to not only upgrade your software, but also port your standards and content to the new version.

PRODUCT SUPPORT

Provide support to your teams by performing troubleshooting and issue resolution related to installations, configurations, use, or output such as printing, plotting, and exporting.

PROJECT MANAGEMENT

PROJECT INITIALIZATION

Perform the steps necessary to initiate a CADD project related to these services which may include an introductory/expectations call, setting up project management collaboration systems, and establishing project management protocols for the team.

STATUS MEETINGS

Prepare for, facilitate, and provide the necessary follow up for periodic status meetings throughout the project duration.

SCHEDULING, CORRESPONDENCE, AND SUMMARIES

Develop a project schedule and maintain it through the project as well as provide the necessary correspondence and summaries of project related information.

PROJECT COMPLETION

Perform the steps necessary to properly closeout the project which may include a project completion meeting to review tasks performed or providing an overall project summary.

TASKS NOT INCLUDED

GROUP TRAINING

This type of training is defined as any hands-on training with more than one student where each student has their own computer to follow along with the curriculum delivered. This type of service is offered by CADD, but it is billed at a day rate instead of an hourly rate.

CONSTRUCTION DOCUMENT CREATION

CADD is not a licensed design firm and does not create contract/construction documents for its clients. CADD is not authorized to sign and/or stamp any architectural or engineering drawings or other contract deliverables.

APPLICATION DEVELOPMENT

This includes writing applications for Autodesk, Bluebeam, or FM:Systems products in any of the supported programming languages such as .NET, C#, AutoLISP, Visual Basic, or any others. This also includes creating standalone applications as compiled, executable code. This type of service is also offered by CADD, but requires a detailed scope of work beforehand.

CONSULTING FOR THIRD-PARTY ADD-ONS OR PRODUCTS

This includes performing consulting assistance for add-ons, plug-ins, or standalone applications that are not developed by Autodesk, Bluebeam, or FM:Systems.

DELIVERABLES

A summary of tasks completed after each engagement is the only pre-determined / pre-defined deliverable for this Hourly Assistance. However, other deliverables may be created during the course of the consulting engagements.

ASSUMPTIONS

GENERAL

- **Scope:** There is no scope or pre-defined deliverables for this engagement.
- **T&M:** CADD requires a signed Time & Materials Agreement for all orders that exceed 20 hours.

SCHEDULING & TRAVEL

- **Schedule:** CADD will make every effort to accommodate Client's desired schedule but cannot guarantee specific dates.
- **Minimums:** CADD will perform all services on an hourly basis; 8-hour minimum charge for services at "Client site" or 2-hour minimum charge for services "in-house".
- **Location:** Not all services are performed at client site; CADD will determine whether services can be performed at Client site or in-house.
- **Travel:** Travel is limited to 75 miles in distance from a CADD office; travel exceeding this distance may incur additional charges.

TECHNICAL

- **Data Back-Up:** Client will back up all data and content prior to any migration/installation; CADD will not be responsible for any loss of data.
- **Admin Rights:** Client shall provide CADD personnel with administrative privileges on servers and/or workstations as necessary for the performance of CADD's duties.
- **Server Access:** If CADD will need to install software directly on the server, Client will need to provide necessary access for this service.
- **Licenses:** Client will have software and licenses available for deployment as necessary.
- **Customization:** Client will provide CADD with a list of any customization items that will be migrated to newer software versions prior to service engagement.

PRICING

OVERVIEW

CADD will provide the services and deliverables detailed in this Statement of Work on an hourly, **Time & Materials** basis outlined in the Costs section below.

All pricing is in U.S. dollars, unless noted otherwise. These costs do not include travel and living expenses, courseware (hard costs or shipping charges), mobile training lab rental, or applicable taxes, if any.

TRAVEL AND EXPENSES

Local Travel, defined as any location within a 75-mile radius of any CADD office location, is included with this Hourly Assistance offering. Travel beyond the distance included in Local Travel may be requested, however it will incur additional fees for time and travel expenses.

COSTS

The hourly rate for this Hourly Assistance project will be shown on your quote and purchase order.

INVOICING

For all Time & Materials consulting services, CADD will invoice monthly for all billable consulting performed.

OPTIMIZING CONSULTING ENGAGEMENTS

There are many ways you can help to get the most value from the consulting time you have purchased.

TIME DELEGATION

CADD's consultants often spend their time split between more than one task (i.e. Project Team Assistance and Standards and Content). On occasion, the assistance – when the consultant is answering questions one-on-one with users – can end up taking most or even the entire time during a consulting visit, so little to no standards development takes place. Deciding on a schedule for that day, such as performing the assistance before lunch and standards development afterwards, can help keep both items on track.

COMPILING AND PRIORITIZING QUESTIONS

One of the best ways to maximize a consultant's time is to compile the questions you plan on having them answer when they are engaged and sending them over ahead of time. This gives the consultant time to think about the questions beforehand and maybe even prepare some examples. Also, if you can prioritize the questions, this will help keep the question review time focused and of value.

ROUND TABLES

Oftentimes, more than one user has the same question or issue with which they need assistance. Sometimes it can be beneficial to review these questions together, possibly in a conference room, with the consultant sharing their screen and walking through the different items.

CLEAR DECISION MAKERS

Frequently, it is unclear who the decision makers are when it comes to standards or workflows. Defining who these people are ahead of time for the consultant will make it easier for them when decisions have to be made and also alleviate any problems with creating unapproved content, standards, etc.

EXHIBIT B
CITY COUNCIL POLICY 100-5

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

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

BACKGROUND

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

PURPOSE

It is the purpose of this Policy to:

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

POLICY

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

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

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

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

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

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

STUDIO PRIME LICENSE AND SUBSCRIPTION AGREEMENT

This Studio Prime License and Subscription Agreement (the "Agreement") is entered into by and between Bluebeam, Inc. ("Bluebeam") and the undersigned ("Licensee") and made effective as of the last date signed below.

1. DEFINITIONS.

- a. "Documentation" includes the Studio Terms of Use (www.bluebeam.com/legal/studio-terms-of-use), this Agreement, Bluebeam's Privacy Policy (www.bluebeam.com/legal/privacy-policy), and the documentation published by Bluebeam on its website (www.bluebeam.com) with regard to the Studio Prime services.
- b. "Licensed User" means Licensee or any employee, agent or other individual that Licensee has duly authorized to access and use the Software pursuant to the applicable end-user license agreement for the Software.
- c. "Prime Administrator" means one or more persons designated by Licensee to administer Licensee's Studio Prime Account.
- d. "Prime Collaborator" means any Studio User who is invited by a Prime Member to be an Attendee in a Project or Session as such terms are defined in the Studio Terms of Use.
- e. "Prime Member" means a Licensed User who is invited by a Prime Administrator to join Licensee's Studio Prime Account. Upon the Licensed User's acceptance to join a Studio Prime Account, that licensed User's Studio account becomes a managed account under the Studio Prime Account to be managed and controlled by Licensee.
- f. "Prorated Subscription Fees" mean the Subscription Fees in effect on the date the User Level is increased that is prorated over the remainder of the Initial Term or Renewal Term, as applicable.
- g. "Software" means the Revu® software application for editing, managing, marking-up, designing and sharing PDF documents.
- h. "Studio" means a cloud-based collaboration platform accessible via the Software that connects Studio Users and gives them the ability to communicate and markup and review documents in real-time.
- i. "Studio Prime" means the optional, paid subscription service that provides Licensee with advanced administrative functionality and visibility over the Licensed User's Studio usage activity and access to third party application integrations.
- j. "Studio Prime Account" means the account created for Licensee upon the execution of this Agreement.
- k. "Studio User" means any individual who has established a Bluebeam user account, has agreed to the Studio Terms of Use, and thereafter accesses and uses the Studio services.
- l. "Subscription Fees" are the annual subscription fees due in exchange for access and use of Studio Prime.
- m. "User Level" means a combination of Licensee's Prime Administrators, Prime Collaborators and Prime Members.

2. **LICENSE TO USE STUDIO PRIME.** Subject to Licensee's acceptance of and on-going compliance with this Agreement, Bluebeam grants Licensee a limited, non-sublicensable, non-transferable, non-exclusive, revocable right and license to access and use the Studio Prime services during the Initial Term and any applicable Renewal Term in accordance with the Documentation. The Studio Prime services may only be used by Licensee and Licensee's Prime Administrator, Prime Members and Prime Collaborators and only for Licensee's own lawful business purposes.

3. **RESERVATION OF RIGHTS.** All right, title, and interest in and to Studio Prime and the related services and Documentation, including, without limitation, all copyrights, patents (whether pending or issued), trade secret rights, trademarks, and other intellectual property, are owned and retained by Bluebeam. All rights not expressly granted or licensed to Licensee herein are reserved.

4. GENERAL TERMS.

- a. **Modifications.** Bluebeam reserves the right to revise, modify or update Studio Prime from time to time in its sole discretion to add new features or functionality or modify existing features or functionality.
- b. **User Level Restrictions.** Licensee may only have such number of Prime Administrators, Prime Collaborators and Prime Members access and use Licensee's Studio Prime account that equals the User Level paid for by Licensee. Licensee may increase the User Level at any time upon written notice to Bluebeam and payment of the Prorated Subscription Fees. Licensee may decrease the User Level upon written notice to Bluebeam made at least thirty (30) days prior to each applicable Renewal Date. Any such decrease shall be effective on the Renewal Date for the following Renewal Term.
- c. **Prime Administrators.** Licensee acknowledges and agrees that Prime Administrator are solely responsible for (a) inviting Studio Users to become Prime Members or Prime Collaborators; (b) managing all Prime Member and Prime Collaborator accounts (including, without limitation, access and permissions to Projects and Sessions for which they are Attendees); (c) assign, create, modify and remove Prime Member and Prime Collaborator permission and restrictions; (d) managing and controlling all content (including, without limitation, Project Files and Sessions Files) created or uploaded into or used in connection with the Studio Prime Account.
- d. **Prime Members.** Licensee acknowledges and agrees that it shall inform and instruct all Prime Members under Licensee's Studio Prime Account of the following: (a) the Prime Member's Studio account will be under the exclusive control of the Prime Administrator; (b) the Prime Administrator can and will access the account and related content, create and modify permissions related to the account and otherwise monitor the Prime Members usage of the account; and (c) the Prime Member may only have one Studio account, which is the Prime Member account.

5. SUBSCRIPTION FEES AND PAYMENT TERMS.

- a. **Subscription Fees.** Licensee agrees to pay the Subscription Fees in effect on the Effective Date for the Initial Term. Licensee further agrees to pay the Subscription Fees in effect on each Renewal Date for each applicable Renewal Term unless Licensee has terminated this Agreement pursuant to Section 6 below. Provided there is a change in the User Level during the Initial Term or any Renewal Term, Licensee agrees to pay Bluebeam the Prorated Subscription Fees.
- b. **Payment Terms.** Bluebeam shall invoice Licensee for the Subscription Fees and Prorated Subscription Fees, if applicable, and Licensee agrees to pay all such invoices on Net 30 day terms. Subscription Fees and Prorated Subscription Fees are non-transferable and non-refundable.
- c. **Past Due Accounts.** Failure to make any payment required hereunder within forty-five (45) days of the Renewal Date will cause this Agreement to terminate without notice and further access to the Studio Prime services will cease.

6. TERM AND TERMINATION.

- a. **Term.** This Agreement shall commence upon the Effective Date and continue for a period of one (1) year (the "Initial Term"). The Initial Term shall renew for additional periods of one (1) year (each a "Renewal Term") upon Licensee's payment of the Subscription Fees on or before the Renewal Date or according to the terms of the applicable invoice Bluebeam provides to Licensee. Unless otherwise notified in writing at least thirty (30) days prior to each Renewal Date, this Agreement shall renew at the same User Level as the Initial Term or previous Renewal Term as applicable. The Initial Term and all Renewal Terms are collectively referred to herein as the "Term". The "Renewal Date" is the date that is one (1) year following the Effective Date and each annual reoccurrence thereof.
- b. **Termination.** This Agreement may be terminated (a) by either party providing written notice of termination to the other party at least forty-five (45) days prior to the end of the Initial Term or any applicable Renewal Term; or (b) pursuant to the terms of Section 5.c.; or (c) pursuant to the terms of Section 7.

- c. **Effective of Termination.** Upon the termination of this Agreement, the license provided herein and Licensee's access and use of the Studio Prime services shall immediately cease.
7. **RIGHT TO AUDIT.** Bluebeam reserves the right to periodically conduct audits of Licensee's use of the Studio Prime services to verify compliance with the terms of this Agreement (each an "Audit"). Licensee shall be given no less than ten (10) days prior written notice of Bluebeam's intent to conduct an Audit. Audits will be conducted during Licensee's normal business hours and will occur no more than once in any twelve (12) month period. In the event an Audit shows that Licensee's actual use of the Studio Prime services exceeds the User Level paid for, Bluebeam shall have the right to immediately invoice Licensee for the unauthorized use, including applicable late fees and interest at the legally allowable rate, and the reasonable costs of the Audit. If Licensee fails to pay such invoice on Net 15 day terms, Bluebeam may terminate this Agreement in addition to all other remedies that may be available to it in law or in equity.
8. **DISCLAIMERS OF WARRANTY; LIMITATION OF LIABILITY.**
- a. **DISCLAIMER OF WARRANTIES.** STUDIO AND STUDIO PRIME ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTY OF ANY KIND WHATSOEVER. BLUEBEAM DOES NOT WARRANT THAT THE FEATURES AND FUNCTIONS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. BLUEBEAM EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES THAT BLUEBEAM DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE.
- b. **LIMITATION OF LIABILITY.** OTHER THAN IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSEE OR BLUEBEAM BE LIABLE FOR ANY LIABILITY, LOST REVENUES, LOST PROFITS, OR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER OR HOWEVER CAUSED ARISING OUT OF OR IN ANY WAY RELATED TO THESE SERVICES WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
9. **CONFIDENTIALITY.** INTENTIONALLY DELETED.
10. **GOVERNING LAW AND ARBITRATION.** This Agreement shall be governed and construed in accordance with the laws of the State of California, excluding California's choice-of-law principles, and all claims relating to or arising out of this contract, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of California, excluding California's choice-of-law principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. Any controversy or claim, whether in law or in equity, arising out of or relating to this EULA, or the breach thereof, shall be settled by arbitration in Los Angeles County administered by JAMS in accordance with its Streamlined Arbitration Rules & Procedures, and judgment on the award rendered by the arbitrator(s) is final and not appealable and may be entered in any court having jurisdiction thereof.
11. **CONTROLLING LANGUAGE.** This Agreement has been prepared in the English language and the English language shall control its interpretation. All notices to be provided by either party hereto shall be in the English language. In the event of any conflict between the English language version and any translation of this EULA that may be provided for convenience only, the English language meaning shall control.
12. **NOTICES.** Any notice or other communications required by this Agreement shall be in writing and sent as follows:
- If to Licensee to the Prime Administrator via email.
 - If to Bluebeam via email to legal@bluebeam.com.
- Notices will be considered given and received the date an email is sent unless the actual date sent is not a


business day (based on the recipient's time zone) then the next business day in the jurisdiction in which the recipient is located shall be considered the date of delivery.

13. **NO ASSIGNMENT.** This Agreement may not be transferred or assigned, voluntarily, by operation of law or otherwise, without Bluebeam's express written consent which may be withheld, delayed or conditioned in the sole discretion of Bluebeam. Provided Bluebeam grants such consent, this Agreement shall be binding upon the assignee in the same manner that it is binding upon Licensee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective authorized representatives.

For and on behalf of Licensee: City of Costa Mesa, California

Licensee's Address: 77 Fair Dr., Costa Mesa, CA 92626

Signed: 

Print Name: Carol Molina Title: Finance Director

Date Signed: 5/23/22 Telephone: _____

Email: _____

Prime Administrator Information:

Licensee is required to name a Studio User as the Prime Administrator and the account to which this Studio Prime license will be established. It can be changed by Licensee at a later time.

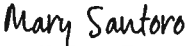
Name: Dan Inloes

Telephone: (714) 754-5008

Studio User ID: _____

For and on behalf of Bluebeam, Inc.

A Delaware corporation located at 443 S. Raymond Avenue, Pasadena, California 91105 USA

Signed: ^{DocuSigned by:} 
FDE886911798436...

Print Name: Mary Santoro Title: VP, Global Sales

Date Signed: 10-May-2022