



PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made as of the Effective Date by and between IMS Infrastructure Management Services, LLC, an Arizona Limited Liability Company hereinafter called "ENGINEER", and the **City of Farmers Branch, Texas**, hereinafter called "OWNER".

RECITALS

WHEREAS, OWNER desires ENGINEER to perform certain work and services set forth in Section 1, Scope of Services.

WHEREAS, ENGINEER has expressed a willingness to perform said work and services, hereinafter referred to only as "services", specified in said Scope of Services, and enumerated under Section 1, of this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, OWNER and ENGINEER agree as follows:

Section 1. Scope of Services

Upon issuance of a written Notice to Proceed by OWNER, ENGINEER agrees to provide to OWNER the necessary professional engineering services related to the preparation of plans and specifications for the Pavement Management Program as set forth in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference ("the Scope of Services").

Section 2. Term of Agreement

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and shall continue until ENGINEER completes the services required herein to the satisfaction of OWNER, unless sooner terminated as provided in Section 8, below.

Section 3. Engineer Obligations

- A. ENGINEER shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should OWNER require additional services not included under this Agreement, ENGINEER shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by OWNER; and without decreasing the effectiveness of the performance of services required under this Agreement.
- B. To the extent reasonably necessary for ENGINEER to perform the services under this Agreement, ENGINEER shall be authorized to engage the services of any agents, assistants, persons, or corporations that ENGINEER may deem proper to aid or assist in the performance of the services under this Agreement with the prior written approval of

OWNER. The cost of such personnel and assistance shall be a reimbursable expense to ENGINEER only if authorized in writing in advance by OWNER.

- C. ENGINEER shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform all services set forth in the Scope of Services.

Section 4. Payment

OWNER agrees to pay ENGINEER for all services authorized in writing and properly performed by ENGINEER in accordance with the Payment Schedule set forth in Exhibit "A", attached hereto and incorporated herein by reference, subject to additions or deletions for changes or extras agreed upon in writing. All fees paid to ENGINEER, by OWNER, shall be based on invoices submitted by ENGINEER for work performed monthly by OWNER, less any previous payments. Payments shall be made within 30 days of receipt of invoice by OWNER.

OWNER reserves the right to delay, without penalty, any partial payment when, in the opinion of OWNER, ENGINEER has not made satisfactory progress on the design of this Project based on the Scope of Services and the Completion Schedule Estimate.

The Total Engineering Fee shall be as specified in Exhibit "C," which shall not exceed Seventy One Thousand Nine Hundred Sixty One Dollars (\$ 71,961.00). OWNER may deduct from any amounts due or to become due to ENGINEER any sum or sums owing by ENGINEER to OWNER. In the event of any breach by ENGINEER of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against OWNER, or the OWNER's premises, arising out of ENGINEER's performance of this Agreement, OWNER shall have the right to retain out of any payments due or to become due to ENGINEER an amount sufficient to completely protect the OWNER from any and all loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by ENGINEER.

Section 5. Responsibilities

- A. ENGINEER shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, plans and other services furnished by ENGINEER under this Agreement. ENGINEER shall, without additional compensation, correct or revise any errors or deficiencies in the design, drawings, specifications, plans and other services.
- B. Neither OWNER's review, approval or acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and ENGINEER shall be and remain liable to OWNER in accordance with applicable law for all damages to OWNER caused by ENGINEER's negligent performance of any of the services furnished under this Agreement.
- C. The rights and remedies of OWNER under this Agreement are as provided by law.

Section 6. Time For Performance

- A. ENGINEER shall perform all services as provided for under this Agreement in a proper, efficient and professional manner in accordance with OWNER's requirements. As time is of the essence of this Agreement, such services shall be completed as provided in the Completion Schedule Estimate attached hereto as Exhibit "A," and incorporated herein by reference, after written Notification to Proceed from OWNER to ENGINEER, exclusive of OWNER and other governmental review time.
- B. In the event ENGINEER's performance of this Agreement is delayed or interfered with by acts of the OWNER or others, ENGINEER may request an extension of time for the performance of same as hereinafter provided, but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.
- C. No allowance of any extension of time, for any cause whatever, shall be claimed or made to ENGINEER, unless ENGINEER shall have made written request upon OWNER for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless OWNER and ENGINEER have agreed in writing upon the allowance of additional time to be made.

Section 7. Documents

- A. All surveys, studies, proposals, applications, drawings, plans, specifications and other documents, including those in electronic form, prepared by ENGINEER and its consultants, subcontractors, agents, representatives, and/or employees in connection with this Agreement ("Project Documents") are intended for the use and benefit of OWNER. ENGINEER and its consultants, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of the Project Documents. Notwithstanding, OWNER shall own, have, keep and retain all rights, title and interest in and to all Project Documents, including all ownership, common law, statutory, and other reserved rights, including copyrights (except copyrights held by the ENGINEER) in and to all Project Documents, whether in draft form or final form, which are produced at OWNER's request and in furtherance of this Agreement. OWNER shall have full authority to authorize contractor(s), subcontractors, sub-subcontractors, OWNER consultants, and material or equipment suppliers to reproduce applicable portions of the Project Documents to and for use in their execution of the work or for any other purpose. All materials and reports prepared by ENGINEER in connection with this Agreement are "works for hire" and shall be the property of OWNER. OWNER shall have the right to publish, disclose, distribute and otherwise use Project Documents in accordance with the Engineering Practice Act of the State of Texas (Texas Occupation Code, Chapter 1001, as amended) and/or Texas Occupations Code, Chapter 1051, as amended. ENGINEER shall, upon completion of the services and full payment for the ENGINEER'S services by the OWNER, or earlier termination and appropriate compensation as provided by this Agreement, provide OWNER with reproductions of all materials, reports, and exhibits prepared by ENGINEER pursuant to this Agreement in a TIFF, JPEG or PDF format, and a DXF format in current version of AutoCAD with NAD-83 coordinate format of all such instruments of service to the OWNER.

- B. All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer programs, estimates, surveys, other data or work items, etc.) prepared under this Agreement shall be submitted for approval of OWNER. All instruments of service shall be professionally sealed as may be required by law or by OWNER.
- C. Acceptance and approval of the Project Documents by OWNER shall not constitute nor be deemed a release of the responsibility and liability of ENGINEER, its employees, associates, agents and Engineers for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by OWNER for any defect in the designs, working drawings and specifications, or other documents prepared by ENGINEER, its employees, contractor, agents and engineers.

Section 8. Termination

- A. OWNER may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to ENGINEER. In the event suspension or termination is without cause, payment to ENGINEER, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by OWNER to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to OWNER.
- B. Should OWNER require a modification of this Agreement with ENGINEER, and in the event OWNER and ENGINEER fail to agree upon a modification to this Agreement, OWNER shall have the option of terminating this Agreement and ENGINEER's services hereunder at no additional cost other than the payment to ENGINEER, in accordance with the terms of this Agreement, for the services reasonably determined by OWNER to be properly performed by ENGINEER prior to such termination date.

Section 9. Insurance

- A. ENGINEER shall provide and maintain Workman's Compensation and Employer's Liability Insurance for the protection of ENGINEER's employees, as required by law. ENGINEER shall also provide and maintain in full force and effect during the term of this Agreement, insurance (including, but not limited to, insurance covering the operation of automobiles, trucks and other vehicles) protecting ENGINEER and OWNER against liability from damages because of injuries, including death, suffered by any person or persons other than employees of ENGINEER, and liability for damages to property, arising from or growing out of ENGINEER's operations in connection with the performance of this Agreement.
- B. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than One Million Dollars (\$1,000,000.00) for one (1) person, and not less than One Million Dollars (\$1,000,000.00) for any one (1) occurrence. Insurance covering damages to property shall be in the sum of not less than One Million Dollars (\$1,000,000.00) for any one (1) occurrence, and One Million Dollars (\$1,000,000.00) aggregate.
- C. ENGINEER shall also provide and maintain Professional Liability Insurance coverage to protect ENGINEER and OWNER from liability arising out of the performance of

professional services, if any, under this Agreement. Such coverage shall be in the sum of not less than One Million Dollars (\$1,000,000.00).

- D. A signed Certificate of Insurance, satisfactory to OWNER, showing compliance with the requirements of this Section 9 shall be furnished to OWNER before any services are performed under this Agreement, and shall further indicate that each and every policy for liability insurance coverage as required herein includes a "Contractual Liability Coverage" endorsement covering the Agreement under Section 10, hereof. Such Certificate of Insurance shall provide for thirty (30) days written notice to OWNER prior to the cancellation or modification of any insurance referred to therein.

Section 10. Indemnification For Injury and Performance

ENGINEER hereby agrees to protect, defend, indemnify and hold harmless the OWNER, its officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnitees"), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, omission or neglect of ENGINEER, its officers, employees, servants, agents or subcontractors, or anyone else under ENGINEER's direction and control, and arising out of, occurring in connection with, resulting from or caused by the performance or failure of performance of any work or services called for by this Agreement, or from conditions created by the performance or non-performance of said work or services. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, ENGINEER shall be obligated to indemnify OWNER as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

Section 11. Indemnification For Unemployment Compensation

ENGINEER agrees that it is an independent contractor and not an agent of the OWNER, and that ENGINEER is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve OWNER of any responsibility or liability from treating ENGINEER's employees as employees of OWNER for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. ENGINEER further agrees to indemnify and hold OWNER harmless and reimburse it for any expenses or liability incurred under said Statutes in connection with employees of ENGINEER.

Section 12. Indemnification For Performance

ENGINEER shall defend and indemnify OWNER against and hold OWNER and the premises harmless from any and all claims, suits or liens based upon or alleged to be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation and management costs incurred by ENGINEER in performing this Agreement.

Section 13. Assignment

ENGINEER shall not assign or sublet this Agreement, or any part thereof, without the prior written consent of OWNER.

Section 14. Applicable Laws

ENGINEER shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes relating or applicable to services to be performed under this Agreement. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court

Section 15. Default of ENGINEER

In the event ENGINEER fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within ten (10) days after written notice by OWNER to ENGINEER, OWNER may, at its sole discretion without prejudice to any other right or remedy:

- A. Terminate this Agreement and be relieved of the payment of any further consideration to ENGINEER except for all work determined by OWNER to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of ENGINEER to and from meetings called by OWNER at which ENGINEER is required to attend, but shall not include any loss of profit of ENGINEER. In the event, of such termination, OWNER may proceed to complete the services in any manner deemed proper by OWNER, either by the use of its own forces or by resubletting to others.
- B. OWNER may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of ENGINEER.

Section 16. Adjustments in Services

No claims for extra services, additional services or changes in the services will be made by ENGINEER without a written agreement with OWNER prior to the performance of such services.

Section 17. Execution becomes Effective

This Agreement will be effective upon execution of the Agreement by and between ENGINEER and OWNER.

Section 18. Agreement Amendments

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

Section 19. Severability.

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 20. Independent Contractor.

It is understood and agreed by and between the parties that ENGINEER in satisfying the conditions of this Agreement, is acting independently, and that the OWNER assumes no responsibility or liabilities to any third party in connection with ENGINEER's actions. All services to be performed by ENGINEER pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of OWNER. ENGINEER shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third party beneficiary to this Agreement.

Section 21. Right-Of-Access.

OWNER will obtain and/or furnish right-of-access on any project site for ENGINEER to perform any required studies, surveys, tests or other necessary investigations in relation to any Task Order. ENGINEER will take reasonable precautions to minimize damage to the personal or real property in the performance of such surveys, tests, studies and investigations.

Section 22. Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If to OWNER:
(Physical Address) Randy Walhood, Director of Public Works
City of Farmers Branch
13000 William Dodson Pkwy
Farmers Branch, TX 75234

(Mailing address): P.O. Box 819010
Farmers Branch, TX 75381

(With copy to): Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If to ENGINEER: Alan Sadowsky
IMS Infrastructure Management Services
1895-D Rohlwing Road
Rolling Meadows, IL 60008

Section 23. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

Section 24. Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

Section 25. Survival of Obligations. Any of the representations and obligations of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the termination of this Agreement shall survive termination.

(Signature page to follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the _____ day of _____, 20____.

OWNER:
City of Farmers Branch, Texas

ENGINEER:
**IMS Infrastructure Management
Services, LLC**

By: _____
Gary D. Greer

By: _____

Title: City Manager _____

Title: Member Manager _____

P.O. Box 819010
Farmers Branch, Texas 75381-9010

WITNESS:

WITNESS:

City Secretary

APPROVED AS TO FORM:

City Attorney

EXHIBIT “A”
Pavement Management Proposal

EXHIBIT "A"



IMS Infrastructure Management Services
1895-D Rohlwing Road, Rolling Meadows, IL 60008
Phone: (847) 506-1500 Fax: (847) 255-2938
www.ims-rst.com

February 11, 2013

City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, TX 75234

Attention: Gary Spoerl
Reference: Pavement Management Program – City of Farmers Branch

Dear Mr. Spoerl;

IMS Infrastructure Management Services is pleased to submit a cost estimate to implement a pavement management program for the City of Farmers Branch, TX. IMS proposes to test the City's entire street and alley network, install the current version of PavePRO Manager Software, and link the data to the City's GIS topology. Digital images and software training will be included in the scope. IMS works closely with other software providers including Lucity (GBA), CarteGraph, INFOR, Micro PAVER, Deighton and others to offer optional 3rd party solutions as appropriate to meet the specific needs of our clients.

For your review, we have also provided cost information on IMS ROWMan asset management software and the capabilities of the Road Surface Tester (RST), which performs simultaneous pavement and ROW asset data collection. The ROWMan software is integrated with the PavePRO Manager software to provide easy access to all asset data, both pavement and ROW features. Signs, signals, pavement striping, pavement markings, sidewalks, ADA ramps, curb & gutter, trees and more can be extracted as part of the current project. IMS will retain the GPS referenced digital video so that the City can have the option of extracting these ROW assets in the future without incurring the additional expense of re-driving the streets.

The proposed pavement management program will accurately reflect current conditions. This street information along with optional ROW data collected by IMS and/or City staff can be used to meet many of the reporting requirements of the GASB 34 "modified approach". IMS automated data collection can provide a cost-effective approach to expand the pavement management software into a complete asset management program.

We have included a short statement of our qualifications and experience for your review. A brief description of the elements of the proposed program with corresponding fee schedule is included on the following pages. The cost summary provided is for the base pavement management program.

We look forward to working with the City of Farmers Branch and are available to further discuss how best to tailor the program to address the goals of the City. If you have any questions regarding the enclosed proposal or would like an on-site presentation, please feel free to contact our office.

Very truly yours,

IMS INFRASTRUCTURE MANAGEMENT SERVICES

A handwritten signature in black ink, appearing to read "Donald L. Hardt". The signature is fluid and cursive, with a large, stylized initial "D".

Donald L. Hardt
Manager of Client Services

COST SUMMARY

IMS has developed the following pavement management cost summary for your review. Based on a street network of 410 lane miles (some of which are 4 and 6 lane streets), we have used 165 test miles for the street estimate. Alleys are estimated at 31 miles bringing the total pavement network estimate to 196 test miles.

Pavement Management Program Based on a Surface Condition Survey of Both Streets and Alleys with Software Implementation, GIS Linkage, Images, Training and Digital Video Storage

Activity	Quantity	Units	Unit Rate	Total
Project Initiation				
Project Initiation	1	LS	\$3,500.00	\$3,500.00
Network Referencing	196	MI	\$10.00	\$1,960.00
Field Surveys				
RST Mobilization & Calibration	1	LS	\$3,000.00	\$3,000.00
RST Surface Condition Survey	196	MI	\$150.00	\$29,400.00
PCC Slab Survey	196	MI	\$35.00	\$6,860.00
Pavement Width Survey	196	MI	\$10.00	\$1,960.00
Data Management				
Data Processing - QA/QC	196	MI	\$20.00	\$3,920.00
PavePRO/GIS Linkage	196	MI	\$20.00	\$3,920.00
Digital Images (1 view @ 25' intervals)	196	MI	\$10.00	\$1,960.00
PavePRO Software	1	LS	\$4,000.00	\$4,000.00
Software Training (2 days on site)	1	LS	\$3,500.00	\$3,500.00
Annual Software Maintenance and Support	1	LS	\$1,000.00	\$1,000.00
Digital Video Storage for Future Asset Extraction	196	MI	\$10.00	\$1,960.00
Project Management	1	LS	\$5,021.00	\$5,021.00
				\$71,961.00

Budget estimates for ROW assets are more difficult to develop because of unlimited scenarios and unknown quantities. Having performed sign surveys for a number of different county, city, and state agencies, we find that the number of signs ranged from 30 to 109 per mile. Other assets (e.g. sidewalks, light poles, hydrants, inlets, etc.) vary dramatically from agency to agency and district to district within the City depending on age, terrain, etc. Since there are some advantages to extracting multiple assets during the extraction activity, IMS will try to assist the City in developing a budget by offering a cost per mile alternative, in addition to or in lieu of the cost per asset previously referenced. We will need the City to provide one or more scenarios that include the various assets or features that would be included in the extraction process. We will then provide the City with a cost per mile to extract the requested assets. We believe that this alternative can assist the City in the budget process and eliminate surprises. If the City has a good estimate of the quantity of some of their assets, the original unit price offer may be the best approach.

Services are provided on a unit-price basis and the City will be charged only for the actual number of miles tested or assets extracted and included in the database. The fee schedule is submitted with the assumption that the City of Farmers Branch will provide or assist IMS with the following information and services:

- Street and alley list and GIS centerline file of pavements to be surveyed complete with functional classifications.
- Notification and coordination with other departments or agencies, if necessary.