

Public Works Department
STAFF REPORT2100 Thousand Oaks Boulevard • Thousand Oaks, CA 91362
Phone 805/449.2400 • Fax 805/449.2475 • www.toaks.org

TO: Andrew P. Powers, City Manager

FROM: Clifford G. Finley, Public Works Director

DATE: November 9, 2021

SUBJECT: **2022 Pavement Overlay and Slurry Program (CI 5538, CI 5568, & MI 2558)**

RECOMMENDATION:

1. Approve Third Amendment to Professional Services Agreement No. 12785-2021 with Pavement Engineering, Inc., of San Luis Obispo, CA, for additional design and testing services on 2022 Pavement Overlay (CI 5538 & CI 5568) and Slurry Program (MI 2558) in the amount of \$27,156 for revised not-to-exceed amount of \$547,004.
2. Award Professional Services Agreement to D. Woolley & Associates, of Tustin, CA, in an amount not-to-exceed \$690,500 for survey monuments preservation services for the 2022 Pavement Overlay program (CI 5538) project, plus \$69,000 for extra services with a term ending December 31, 2023.
3. Authorize expenditure in the amount of \$786,656 (\$27,156 third amendment, \$690,500 agreement, \$69,000 of extra services) from A/C #135-5310-631-8300 (CI 5538, 2022 Pavement Overlay Program).

FINANCIAL IMPACT:

No Additional Funding Requested. \$21,788,200 is included in the Adopted FY 2021-23 Capital Improvement Program Budget. Total estimated project cost is \$22.4 million.

BACKGROUND:

The City is responsible for maintaining approximately 380 miles of streets valued at \$700 million. Performing regular maintenance through pavement repairs, sealing, resurfacing, and overlay programs is critical to maintaining streets.

2022 Pavement Overlay & Slurry Program
November 9, 2021
Page 2

Staff has completed the preliminary design for the 2022 Pavement Program and has established a list of streets and proposed pavement rehabilitation and preservation treatments. The proposed 2022 Pavement Overlay and Slurry Program preliminarily includes a total of approximately 65 miles of roadway pavement rehabilitation, including 10 miles of pavement overlay on arterial streets, 16.9 miles of overlay on collector and residential streets, 9.6 miles of micro-surfacing on collector streets, and 28.4 miles of slurry seal primarily on residential streets. The project also includes the installation and modification of approximately 285 curb ramps to comply with Americans with Disabilities Act (ADA) requirements, as well as resurfacing of three City facility parking lots and pavement overlay at the Municipal Service Center's (MSC) back parking lot.

Based on the type of pavement maintenance treatments, these programs will be split into two different contracts: the 2022 Pavement Overlay Program (CI 5538 and CI 5568) to include overlay, micro-surfacing, and curb ramps, and the 2022 Pavement Slurry Program (MI 2558) for applying slurry treatments. Staff will closely coordinate and manage both contracts (Attachment #1).

On July 6, 2021, City Council approved a Professional Services Agreement for \$542,565 with Pavement Engineering, Inc. (PEI) for design services in connection with 2022 Pavement Overlay (CI 5538) and Pavement Slurry (MI 2558) Program. The PEI agreement has been subsequently amended twice. The First Amendment was for the preparation of location maps for the reconstruction of curb ramps and preparation of surface drainage improvement plans on Montgomery Court. The Second Amendment was for the preparation of alternative striping plans on Reino Road and Hillcrest Drive.

DISCUSSION/ANALYSIS:

Survey Monumentation Preservation Services - Agreement

As part of the 2022 Pavement Overlay Program, it is necessary to retain the services of a professional survey firm to preserve survey monuments where overlay treatments may damage or cover existing survey monumentation citywide. To provide pre-construction and post-construction survey services and the related documentation necessary for the monument preservation per state law, the City published a Request for Proposals/Qualifications (RFP/Q) on September 2, 2021.

In accordance with Government Code section 4526 and Thousand Oaks Municipal Code Section 3-10.401, staff solicits Proposals from qualified consulting firms through issuance of an RFP/Q. Unlike the low bid requirements of the Public Contract Code, contracts for professional, management, general or special services should only be awarded to firms or persons who have demonstrated an

2022 Pavement Overlay & Slurry Program
November 9, 2021
Page 3

adequate level of experience, competence, training, credentials, resources, staffing, and other professional qualifications necessary for more than a satisfactory performance of the services solicited. The award of a Professional Services Agreement is based upon a variety of factors that demonstrate best value for the solicited scope of service. The cost of the service may be considered as one of those factors; however, the lowest cost is not the sole factor in deciding the contract award.

The following three surveying consulting firms submitted proposals on September 23, 2021:

1. D. Woolley & Associates (Tustin, CA)
2. Michael Baker International, Inc. (Camarillo, CA)
3. Johnson-Frank & Associates, Inc. (Anaheim, CA)

Staff evaluated each proposal for content, qualifications, creativity, project understanding, and quality using the following considerations:

- Project understanding and approach
- Relevant experience (projects of similar size and scope)
- Quality, clarity, responsiveness, and conformance with the terms of RFP/Q
- Qualifications and availability of key persons working on the project
- Team members' (subconsultants) qualifications
- Reasonableness of completion schedule and estimated level of effort dedicated to completing each task
- Best overall qualifications and value

After careful review and consideration of the listed criteria, D. Woolley & Associates was determined to be most qualified to best fit the City's needs for this project. Detailed scope of work and consulting fees have been negotiated and finalized. Staff recommends approval of the Professional Services Agreement with D. Woolley & Associates for a not-to-exceed amount of \$690,500 (Attachment #2).

Pavement Design and Testing Services – Third Amendment

In order to provide the required additional professional services for curb ramp design and engineering at Westlake Hills Elementary School and 1492 Fordham Avenue, as well as for performing subgrade soil lab testing for the appropriate pavement structural section design, staff recommends approval of the Third Amendment to the Professional Services Agreement with Pavement Engineering, Inc. (PEI) in the amount of \$27,156 (Attachment #3).

2022 Pavement Overlay & Slurry Program
November 9, 2021
Page 4

The following is a preliminary cost estimate of the 2022 Pavement and Slurry Program:

2022 Pavement Program Estimated Cost	
Design and Support Services (Encumbered)	\$ 542,600
Amendment No. 1 (Encumbered)	\$ 15,800
Amendment No. 2 (Encumbered)	\$ 10,800
Monument Preservation (This Action)	\$ 690,500
Amendment No. 3 (This Action)	\$ 27,200
Testing and Inspection Services (Future)	\$ 900,000
Pavement Overlay Construction (Future)	\$12,386,000
Pavement Slurry Construction (Future)	\$ 3,828,000
Curb Ramps Construction (Future)	\$ 1,800,000
Storm Drain Construction (Future)	\$ 500,000
Utility Adjustments (Future)	\$ 450,000
Contingency	\$ 1,200,000
TOTAL	\$22,350,900

The following is a preliminary project schedule:

Final Design	November 2021
Bid Process & Construction Award	December 2021 to February 2022
Construction	March to November 2022

Community Outreach: Staff will develop a comprehensive outreach campaign to keep residents informed and up to date. The outreach plan will include a project logo, slogan, project webpage (www.toaks.org/streets), and a dedicated project phone number (805-449-2487).

In addition, staff will notify residents prior to construction via social media, changeable message signs, and project identification boards. Notices will be sent to all utility companies and Homeowners Associations impacted by the street closures. Extensive public outreach will continue as the work progresses with regular updates sent out through all the City's communication outlets.

This project meets City Council's Top Ten Priorities #9 to, "Adopt and implement two-year Operating and Capital Improvement budgets that are aligned with best practices on fiscal sustainability and financial resiliency. Make strategic investments in existing critical public works infrastructure including pavement management, sidewalks, water resources, and streetscape."

2022 Pavement Overlay & Slurry Program
November 9, 2021
Page 5

CIP PROJECT PRIORITY (as outlined in FY 2021-22 & FY 2022-23 CIP Program Budget)

Priority Two – Necessary, but not essential, and there could be consequences if deferred.

COUNCIL GOAL COMPLIANCE:

Meets City Council Goals C and F:

- C. Operate City government in a fiscally and managerially responsible and prudent manner to ensure that the City of Thousand Oaks remains one of California's most desirable places to live, work, visit, recreate and raise a family.

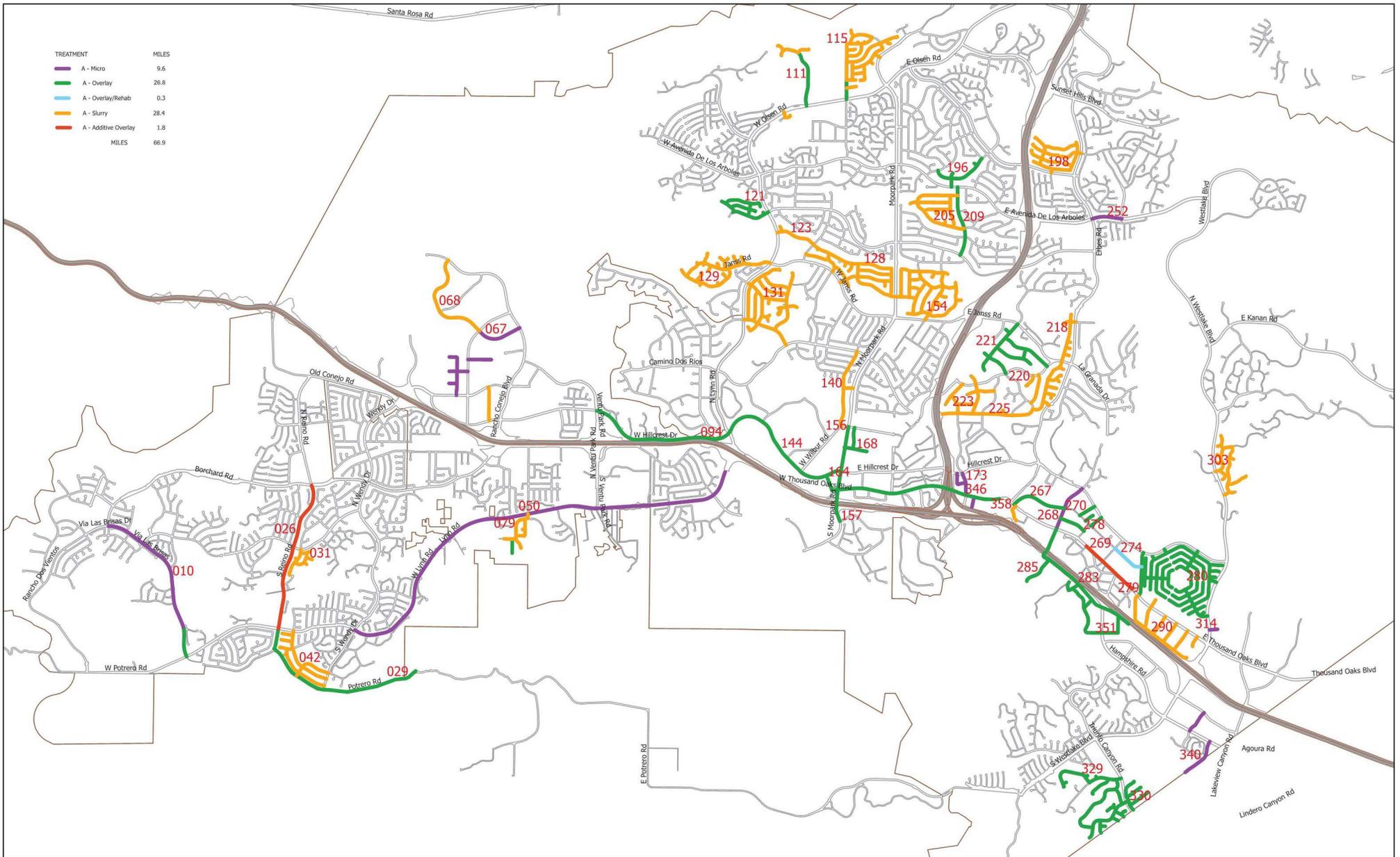
- F. Provide and enhance essential infrastructure to ensure that the goals and policies of the Thousand Oaks General Plan are carried out and the City retains its role and reputation as a leader in protecting the environment and preserving limited natural resources.

PREPARED BY: Michelle McCarty, Engineering Associate

Attachments:

- Attachment #1 – 2022 Pavement Overlay and Slurry Program Map
- Attachment #2 – Agreement for Professional Services with D. Woolley & Associates
- Attachment #3 – Amendment No. 3 to PEI Agreement

2022 PAVEMENT OVERLAY and RESURFACING PROGRAM (CI 5538, 5568 and MI 2558)



ATTACHMENT #2

Project Name: 2022 Pavement Overlay
and Resurfacing
Program (CI 5538 and
CI 5568)

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF THOUSAND OAKS
AND
D. WOOLLEY & ASSOCIATES**

THIS AGREEMENT is made and entered into this 9th day of November, 2021, by and between **CITY OF THOUSAND OAKS**, a municipal corporation ("City"), and **D. WOOLLEY & ASSOCIATES** ("Consultant").

City and Consultant agree as follows:

1. RETENTION OF CONSULTANT

City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 2. Consultant warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by Consultant are as follows:

Professional land services in conjunction with the 2022 Pavement Program. Based on a preliminary search of recorded maps, there are an estimated 995 survey monuments requiring preservation including 965 center monuments and 30 ties on curb ramps to be reconstructed and are more particularly set forth in the Scope of Work, attached as Exhibit "A", which is incorporated herein by reference.

3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** The total compensation payable to Consultant by City for the services under this Agreement **SHALL NOT EXCEED** the sum of \$690,500 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly, at the hourly rates and with reimbursement to Consultant for those expenses set forth in Consultant's Fee Proposal, attached as Exhibit "B", and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon Consultant December 31, 2023, after which any change in the rates and expenses must be approved in writing by City's Project Manager (City is to be given 60 days' notice of any rate increase request), provided the not to exceed amount is the total compensation due Consultant for all work described under this Agreement

(b) **Prevailing Wage.** Consultant may be obligated to pay prevailing wages under the California Labor Code. Consultant agrees to indemnify, defend and hold City harmless from any claim that prevailing wages should have been paid, and shall be liable for the payment of the same and any penalties thereon. It is the responsibility of Consultant to be familiar with the California Labor Code as it relates to this Agreement, and failure or neglect of Consultant to understand the California Labor Code shall in no way relieve Consultant from any obligations.

(c) **Department of Industrial Relations Requirements.** Consultant's work may be subject to the payment of not less than prevailing wages under California Labor Code Sections 1720 and 1770 et seq. and subject to compliance monitoring and enforcement by the Department of Industrial Relations. No consultant or subcontractor may be awarded a contract for public work unless registered with the Department of Industrial Relations, pursuant to California Labor Code Section 1725.5. Consultant's DIR registration number is 1000051549.

(d) **Payment.** Consultant shall provide City with written verification of the actual compensation earned, in a form satisfactory to City's Project Manager. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including, if applicable, a list of hours worked by personnel classification). All payments shall be made within 30 days after City's approval of the invoice.

(e) **Extra Services.** Additional work not reasonably encompassed by the Scope of Services described in Section 2 may be agreed upon only by execution of a written Amendment to this Agreement. No liability or right to compensation for extra services shall exist without such Amendment. Unless otherwise stated in the Amendment, applicable rates for extra services shall be at the rates set forth in Exhibit "B".

4. CITY PROJECT MANAGER

The services to be performed by Consultant shall be accomplished under the general direction of, and coordinate with, City's "Project Manager", as that staff person is designated by City from time to time, and who presently is Michelle McCarty.

5. TERM, PROGRESS AND COMPLETION

The term of this Agreement is from the date first written above to December 31, 2023, unless term of this Agreement is extended, or the Agreement is terminated as provided for herein.

Consultant shall not commence work on the services to be performed under the Agreement until (i) Consultant furnishes proof of insurance as required by paragraph nine (9) below, and (ii) City's Project Manager gives written authorization to proceed with the work. All services shall be completed within the term of this Agreement.

6. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports and other documentation (other than Consultant's drafts, notes and internal memorandum), including duplication of same prepared by Consultant in the performance of these services, are the property of City. City shall be entitled to immediate possession of the same upon completion of the work under this Agreement, or at any earlier or later time when requested by City. City agrees to hold Consultant harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans, specifications, graphics, brochures, reports, and other documentation for purposes other than those described in this Agreement, unless written authorization of Consultant is first obtained.

7. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTS

This Agreement is for professional services, which are personal to City. Christian Maietta is deemed to be especially experienced and is a key member of Consultant's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, City on the progress of the work. Should said individual be removed from assisting in this contracted work for any reason, City may terminate this Agreement.

This Agreement is not assignable by Consultant without City's prior written consent.

The following portions of the work described in this Agreement may be subcontracted out to other parties by Consultant: No part of the work described in this Agreement may be subcontracted out to other parties.

8. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for Consultant's Damages. Consultant holds City, its elected officials, officers, agents, employees and volunteers, harmless from all of Consultant's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Consultant, to Consultant's employees, to Consultant's contractors or subcontractors, or to the owners of Consultant's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or performance of any activity or work required under this Agreement.

(b) Defense and Indemnity of Third Party Claims/Liability. To the maximum extent allowed by law, Consultant shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, agents, employees and volunteers from and against all liability including, but not limited to, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Consultant, or should City otherwise find Consultant's legal counsel unacceptable, then Consultant shall reimburse City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay City any final judgment rendered against City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of Consultant's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Consultant's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Consultant shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of the Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of City.

(c) Nonwaiver. City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City, or the deposit with City, of any insurance certificates or policies described in Section 9.

9. MINIMUM SCOPE AND LIMIT OF INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, and any extension thereof, policies of insurance of the type and amounts described below and in a form that is satisfactory to City.

Coverage shall be at least as broad as:

(a). **Commercial General Liability (CGL):** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry General Liability insurance coverage at least as broad as Insurance Services form CG 00 01 in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate for bodily injury, personal and advertising injury and property damage, including without limitation, blanket contractual liability.

(b). **Automobile Liability:** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Automobile Liability insurance coverage at least as broad as Insurance Services form CA 00 01 or the exact equivalent covering bodily injury and property damage for all activities of Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage of any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c). **Worker's Compensation:** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry workers compensation statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for bodily injury or disease. Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its elected officials, officers, agents, employees and volunteers for all work performed by Consultant, its employees, agents and subcontractors.

(d). **Professional Errors and Omissions Insurance:** Consultant shall, at Consultant's sole cost and expense throughout the term of this Agreement, and any extensions thereof, carry professional errors and omissions coverage of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate, with tail coverage for an extended reporting period of three (3) years.

If Consultant maintains higher limits than the minimum shown above, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

City, its elected officials, officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 10 01 and CG 20 37 10 01 if a later edition is used). The provision shall also apply to any excess liability policies. In addition, Consultant shall ensure that the automobile liability policy contains a provision covering City as an additional insured, and shall obtain an endorsement to that effect if it does not.

Excess Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Umbrella or excess policies shall provide coverage at least as broad as specified for underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf" with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion of claims or suits by one insured against the other. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City as required in written contract or agreement before City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's Rights of Enforcement

In the event any policy of insurance required under this Agreement does not comply with these specifications or is cancelled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant's payments. In the alternative, City may cancel this Agreement.

City's Right to Revise Specifications

City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

Primary and Non-Contributory Coverage

For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City, its elected officials, officers, agents, employees

and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be excess of Consultant's insurance and shall not contribute with it and shall be at least as broad as CG 20 01 04 13.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. City may require Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with a current A.M. Best's rating of no less than A:VII, (unless otherwise acceptable to City).

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected officials, officers, agents, employees or volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Consultant hereby waives his own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to City prior to commencement of work.

Claims Made Policies

If any of the required policies provided coverage on a claims-made basis:

- (a). The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of contract work.
- (b). Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the work required under this Agreement.

(c). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Agreement work.

Verification of Coverage

Consultant shall provide City with copies of certificates (on City certificate form or an Accord form as modified per City direction) for all policies, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to City. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Consultant's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

10. RELATION OF THE PARTIES

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

11. CORRECTIONS

In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work that may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be charged to Consultant or withheld from any funds due to Consultant hereunder.

12. TERMINATION BY CITY

City may terminate without cause any or all of the services agreed to be performed under this Agreement upon 30 calendar days written notice. If termination is for cause, no advance notice need be given. In the event of termination, Consultant shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by City to Consultant within 30 days following submission of a final statement by Consultant unless termination is for cause. In such event, Consultant shall be compensated only to the extent required by law.

13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished, or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors, agents and consultants for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors, agents and consultants.

14. AUDIT OF RECORDS

Consultant shall maintain, in accordance with generally accepted accounting principles, complete and accurate records of all activities and operations relating to this Agreement. Records, including but not limited to, timecards, employment records, work progress reports, reimbursements, invoices, project records, proprietary data and information, as well as licensed software and any electronic records shall be kept for a period of four years beyond the termination of this Agreement. Consultant agrees that City, or its authorized representative, shall have the right to examine, audit, excerpt, copy or transcribe any of the records pertaining to this Agreement at any time during normal business hours. Consultant shall

reimburse City for all reasonable costs of the audit, including travel time and auditor costs, should such audit reveal an overcharge of five (5) percent or more. Any overcharge will be considered a breach of this Agreement and could be cause for termination. The obligations of this section shall be explicitly included in any subcontracts or other agreements entered into by Consultant with respect to this Agreement.

15. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

16. CONFLICT OF INTEREST

Consultant is unaware of any City employee or official that has a financial interest in Consultant's business. During the term of this Agreement and/or as a result of being awarded this Agreement, Consultant shall not offer, encourage or accept any financial interest in Consultant's business by any City employee or official.

17. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

18. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

19. GOVERNING LAW

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Ventura County.

20. TAXPAYER IDENTIFICATION NUMBER

Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9, as most recently issued by the Internal Revenue Service.

21. NON-APPROPRIATION OF FUNDS

Payments due and payable to Consultant for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of City funds. In the event City has not appropriated sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

22. MODIFICATION/AMENDMENT OF AGREEMENT

Any amendment, modification, or variation of the terms or tasks of this Agreement shall be in writing and shall be effective only upon the mutual written approval of the City and Consultant.

23. USE OF THE TERM "CITY"

Reference to "City" in this Agreement includes the City Manager or any authorized representative acting on behalf of City.

24. PERMITS AND LICENSES

Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

25. CAPTIONS

The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

26. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and binds said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

27. ENTIRE AGREEMENT BETWEEN PARTIES

Except for Consultant's proposals and submitted representations for obtaining this Agreement, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services and contains all of the covenants and agreements between the parties with respect to said services.

28. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

29. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Michelle McCarty
Public Works Department
City of Thousand Oaks
2100 Thousand Oaks Boulevard
Thousand Oaks, CA 91362

TO CONSULTANT: David E. Woolley
D. Woolley & Associates
2832 Walnut Ave, Suite A
Tustin, CA. 92780

30. SIGNATURES

(a) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) **Scanned Signatures.** In the event that any signature is delivered by facsimile transmission or submitted electronically as a scanned image (i.e., files with .pdf, .tiff or .jpeg extensions), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or scanned signature page were an original thereof.

(c) **Digital/Electronic Signatures.** This Agreement may be executed through the use of digital or electronic signatures provided they meet the requirements of the Electronic Signatures in Global and National Commerce (ESIGN) Act and the California Uniform Electronic Transactions Act (UETA) and are produced using a City-approved method. The presence of an electronic signature on this document shall be construed as the parties' consent to do business electronically

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

D. WOOLLEY & ASSOCIATES

David E. Woolley, President

CITY OF THOUSAND OAKS

Claudia Bill-de la Peña, Mayor

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, City Manager

APPROVED BY DEPARTMENT HEAD:

Clifford G. Finley, Public Works Director

APPROVED AS TO FORM:
Office of the City Attorney

Tracy Friedl, Assistant City Attorney

EXHIBIT A

SCOPE OF WORK

**2022 Pavement Overlay and Resurfacing (CI 5538) Program
Monument Preservation Services**

Consultant shall perform the following Tasks:

Task 1. Pre-Construction Surveying requirements

This task is to be completed prior to the commencement of construction activities:

- 1.1 Consultant shall submit the type of survey instrument proposed for the surveying work.
- 1.2 Consultant shall research and analyze existing centerline monuments and their associated centerline ties within the streets of the project and submit to the City a survey work plan and schedule for approval.
- 1.3 Consultant shall for the preconstruction survey work set a minimum of three (3) centerline ties for each found existing recorded centerline monument and categorize in the following scenarios:
 - 1.3.1 Found existing recorded monument that has three (3) ties. – No new ties required.
 - 1.3.2 Found existing recorded monument that has two (2) ties. – Set one (1) new tie.
 - 1.3.3 Found existing recorded monument that has one (1) tie. – Set two (2) new ties.
 - 1.3.4 Found existing recorded monument that has no ties – Set three (3) new ties.
 - 1.3.5 Set a minimum of four (4) new centerline ties for each found centerline monument at no cost to the City. This in essence requires one additional tie to set in each scenario above.
- 1.4 Consultant shall provide the City with Pre-Construction Corner Record including depth information and sketch for each found monument and their associated ties with supporting documents on or before February 1, 2022.

- 1.5 Consultant shall patch all holes caused by removing asphalt for preconstruction survey activities with cold patch material as approved by the City.
- 1.6 Consultant shall file the Pre-Construction Corner Record for each set centerline monument with the County Surveyor Office after City approval.
- 1.7 Consultant shall provide the City with copies of all filed Corner Records.

Task 2. Post-Construction Surveying requirements

This work is to commence after construction of the project:

- 2.1 Consultant shall describe the type of survey instrument proposed for the surveying work.
- 2.2 Consultant shall re-establish the centerline monuments and set centerline monuments within the Project as directed by the City.
- 2.3 Consultant shall edit the field sketches, where needed, to identify the re-established centerline monument.
- 2.4 Consultant shall provide the City with Post-Construction Corner Records and sketches for each set centerline monument and their associated ties.
- 2.5 Consultant shall file the Post-Construction Corner Record for each set centerline monument with the County Surveyor Office after City approval.
- 2.6 Consultant shall provide the City with copies of all filed Corner Records.

Task 3. Curb Ramp Monuments Preservation

This task is to be completed prior to the commencement of construction activities:

- 3.1 Consultant shall describe the type of survey instrument proposed for the surveying work.
- 3.2 Consultant shall provide a detailed proposal for preservation of the Curb Ramp Monuments.
- 3.3 Consultant shall research and analyze existing curb ramp monuments within the streets of the project and submit to the City a survey work plan and schedule for approval.

- 3.4 Consultant shall perform curb ramp ties preservation and provide the City with Corner Record for each found monument with supporting documents on or before February 1, 2022.
- 3.5 Consultant shall file the Corner Record for each monument with the County Surveyor Office after City approval.
- 3.6 Consultant shall provide the City with copies of all filed Corner Records.

Task 4. Optional Services: Replacement of centerline monument with Standard Survey Monuments (SSM)

The City is considering replacement of centerline monuments in selected areas with Standard Survey Monuments/Well Monuments depending on the project budget. Consultant shall work in unison with City staff prior to preconstruction to identify areas that may benefit from well monuments and during the course of preconstruction surveying activities Consultant shall document existing conditions of those areas and identify any other potential monuments that may benefit from replacement.

Consultant shall excavate and install each well monuments, provide traffic control if necessary, set brass disks, prepare and file the survey records with the County Surveyor Office after City approval in accordance with the Ventura County Road Standard Plate E-4 for Standard Survey Monument details.

Task 5. Project Meetings:

Consultant shall prepare for and conduct the following meetings (may be via Zoom or Teams, or in person at City hall at sole discretion of the City), and shall prepare and distribute meeting agendas and minutes:

- 5.1 Consultant shall attend the Project Kickoff meeting (allow 3 hours) – shall include project team introduction, and consultant presenting the project approach, schedule, etc.
- 5.2 Consultant shall attend Project progress meetings (three meetings at 2.5 hours each) – to be scheduled as deemed necessary by the City.

Assumptions:

1. Project construction start date is expected in March 2022.
2. Project construction completion date is expected by December 2022, or sooner.

3. All set monuments shall have the tag of the Professional Land Surveyor (PLS) in charge.
4. Any found ties that do not have a tag shall be tagged by the City's contracted PLS in charge.
5. Lead, Tack and Tag is an acceptable tie for this project.
6. Replacement centerline monuments shall be six (6) inch (minimum) long gear spike and washer or as directed by the City.
7. The paving contractor is required to protect well monuments. The City's contracted PLS shall verify that well monuments are undisturbed from the paving contractor's activities.
8. Corner Records or sketches shall be prepared on the County Surveyor approved form.
9. Proposed fee schedule should include all costs and materials, including but not limited to all necessary traffic controls, preparation and filing fees with the County Surveyor's Office.
10. Each invoice will be paid after the corresponding Corner Record has been filed with the Office of the County Surveyor or six months after final Corner record submittal to the County Surveyor, whichever comes first.
11. Portion of area 280 (See Appendix C) only needs post-construction since pre-construction Corner Record for this area is already filed with the County Surveyor's Office. (See 62 RS 80)
12. ALL ties should be set outside of the Curb Ramps.
13. Consultant shall be responsible for research and analysis of existing centerline monuments and their associated centerline ties within the streets of the project. Any preliminary information provided by the City as part of this proposal is based on a search for budgeting purposes only and must be verified and researched by the City's contracted PLS in charge.

EXHIBIT B

2022 PAVEMENT OVERLAY PROGRAM - CITY OF THOUSAND OAKS



Compensation



Schedule of Hourly Rates for Services

Professional Land Surveyor	\$195.00
Survey Manager	\$180.00
Project Surveyor	\$171.00
Technician/CAD Operator	\$135.00
One Person Survey Party w/equipment	\$195.00
Two Person Survey Party w/equipment	\$305.00
Three Person Survey Party w/equipment	\$380.00
Expert Witness/Deposition	\$425.00
Clerical	Included in Overhead

Prints, research material & other incidental supplies: Cost + 5%

1. Travel time rate will be charged at the same rates as shown above (Portal to Portal).
2. Overtime, evening, or Saturday work authorized by the client will be charged at 1.50 times the rate as shown above.
3. Work on Sundays, holidays or after 12 hours onsite, as authorized by the client, will be charged at 2 times the rates as shown above.
4. A minimum of 4 survey hours will be charged for field crews.
5. Per diem and lodging expenses will be billed at \$144/day or government standard, to be determined prior to notice to proceed.



ATTACHMENT# 3

Project Name: 2022 Pavement Overlay & Resurfacing
(CI 5538 and CI 5568) and Pavement Slurry (MI 2558)

**THIRD AMENDMENT TO
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF THOUSAND OAKS
AND
PAVEMENT ENGINEERING, INC.**

Contract No. 12785-2021

THIS THIRD AMENDMENT to the Agreement for Professional Services entered into between the **CITY OF THOUSAND OAKS**, a municipal corporation (hereafter "City") and **Pavement Engineering Inc. (PEI)**, entitled 2022 Pavement Overlay and Resurfacing Program (CI 5538 and CI 5568) and 2022 Pavement Slurry Program (MI 2558) and dated 6th of July 2021 (herein "Contract") is made this 9th day of November, 2021.

RECITALS

A. Sections 2 and 3 of Contract, currently, and as may have been previously amended, provides for a "not-to-exceed" total payment as consideration to Consultant of \$ 519,848 for services generally and briefly described as providing specialized pavement engineering and design services and professional support services during the bid phase and the construction phase. Services and deliverables shall generally include evaluating pavement rehabilitation strategies and treatments, provide locations for various pavement treatments, provide curb ramp compliance report and design, perform subgrade soil testing, traffic lane striping, drainage improvement, review all material submittals and certifications, plans and specifications,

B. City is in need of expanding the Scope of Services to be performed under the present Contract, and Consultant is desirous of performing such and receiving additional compensation for said extra services.

AGREEMENT TO AMEND

NOW, THEREFORE, the undersigned parties to Contract agree to amend Contract as described below:

Part 1. The following services to be performed by Consultant are added to the Scope of Services listed in Section 2 of Contract and such section is hereby amended to add and also include the following services:

In addition to the services in the original Agreement, the Engineer shall also perform all the work as set forth in Exhibit A-3, attached hereto and incorporated herein, and generally as follows:

- Provide additional curb ramp designs at Westlake Hills Elementary Location 1, Westlake Hills Elementary Location 2, and 1492 Fordham Ave.
- Conduct Resistance Value (R-Value) soil tests for the pavement design at the Municipal Service Center.

Part 2. The sum of \$27,156, is added as compensation to Consultant under the present Contract for the above-described additional services, and Subsection 3 (a) of Contract is hereby amended to read in its entirety as follows:

- (a) **Maximum and Rate.** The total compensation payable to Consultant by City for the services under this Agreement **SHALL NOT EXCEED** the sum of \$547,004 and shall be earned as the work progresses.

Part 3. All terms used in Parts 1 and 2 above shall have the meanings ascribed thereto in Contract. Except as amended in Part 1 and 2 above, all other sections, terms, obligations, duties, clauses, and provisions of Contract shall remain the same.

IN WITNESS WHEREOF, the parties execute this Third Amendment to Contract as of the date set forth above.

PAVEMENT ENGINEERING, INC.

Joseph L. Ririe, P.E, President

William Long, CEO/CFO

CITY OF THOUSAND OAKS

Claudia Bill-de la Peña, Mayor

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, City Manager

APPROVED BY DEPARTMENT HEAD:

Clifford G. Finley, Public Works Director

APPROVED AS TO FORM:
Office of the City Attorney

Tracy Friedl, Assistant City Attorney

Exhibit A-3

**2022 Pavement Overlay (CI 5538, 5568) and Slurry Program (MI 2558)
Pavement Engineering and Design Services**

SCOPE OF WORK – Amendment 3

The amended scope of work is described below:

Task 1 - Pavement Engineering and Design

Task 1.2B Consultant shall provide additional curb ramp design at the following locations:

- Westlake Hills Elementary School – Location #1
- Westlake Hills Elementary School – Location #2
- 1492 Fordham Avenue

Task 1.2C Consultant shall conduct Resistance Value (R-Value) soil tests on the soil samples provided by the City for the pavement design at the Municipal Service Center parking lot.