

**STAFF REPORT****CITY OF OCEANSIDE**

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DATE: July 18, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF AMENDMENT 1 IN THE AMOUNT OF \$100,000 TO THE PROFESSIONAL SERVICES AGREEMENT WITH CONSTRUCTION TESTING AND ENGINEERING, INC. FOR ON-CALL QUALITY ASSURANCE AND QUALITY CONTROL TESTING AND INSPECTION SERVICES AND AUTHORIZATION FOR THE CITY ENGINEER TO EXECUTE THE AMENDMENT**

**SYNOPSIS**

Staff recommends that the City Council approve Amendment 1 in the amount of \$100,000 to the Professional Services Agreement with Construction Testing and Engineering, Inc. for on-call quality assurance and quality control (QA/QC) testing and inspection services and authorize the City Engineer to execute the amendment.

**BACKGROUND**

On August 16, 2006 the City entered a Professional Services Agreement with Construction Testing and Engineering on a per project basis for QA/QC testing and inspection services. The primary need of these services is the City's Annual Overlay and Slurry Seal Projects, but many smaller capital improvement projects also require testing and inspection. Providing on-call QA/QC testing and inspection will reduce staff time to procure these services and insure it is provided. Larger projects will continue to have QA/QC testing and inspection included in their scope of work.

**ANALYSIS**

Staff selected Construction Testing and Engineering (CTE) because of its experience on City projects. Based on previous experience, knowledge of applicable requirements and quality of work, a one-year Professional Services Agreement with CTE for on-call QA/QC testing and inspection services was executed on August 16, 2006, in an amount not to exceed \$100,000. CTE provided testing and inspection services under this Professional Services Agreement to the City for the last year and through May 2007, CTE had charged \$56,880.78 for those services. Therefore, staff is confident that CTE will remain under the \$100,000 limit. Staff is extremely pleased with CTE's quality of work and responsiveness to the City's needs.

Section 8 of the Professional Services Agreement includes the statement “Two one-year extensions may be granted on a year-to-year basis, based on acceptable performance, for a total maximum term of three years.”

Staff also recommends that the compensation section of the original Professional Services Agreement be amended to clarify the \$100,000 limit is per year of service. Staff further recommends amending the agreement to provide one more one-year extension, in an amount not to exceed \$100,000, may be administratively granted based on acceptable performance.

**FISCAL IMPACT**

The cost of the QA/QC testing and inspection services will be paid from each project’s business account unit.

**INSURANCE REQUIREMENTS**

The City’s standard insurance requirements will be provided.

**COMMISSION OR COMMITTEE REPORT**

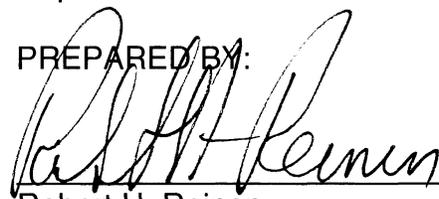
Does not apply.

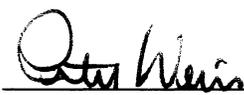
**CITY ATTORNEY’S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendment 1 in the amount of \$100,000 to the Professional Services Agreement with Construction Testing and Engineering, Inc. for on-call quality assurance and quality control (QA/QC) testing and inspection services and authorize the City Engineer to execute the amendment.

PREPARED BY:  
  
Robert H. Reinen  
Associate Engineer

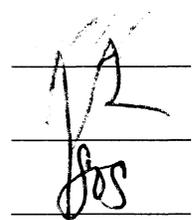
SUBMITTED BY:  
  
Peter A. Weiss  
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant to the City Manager

Joseph Arranaga, Acting Deputy Public Works Director

Scott O. Smith, City Engineer



**CITY OF OCEANSIDE**

**AMENDMENT 1**  
**TO**  
**PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: On-Call Quality Assurance and Quality Control Testing and Inspection Services**

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and CONSTRUCTION TESTING ENGINEERING, INC., hereinafter designated as "CONSULTANT."

**RECITALS**

WHEREAS, CITY and CONSULTANT are parties to that certain Professional Services Agreement dated August 16, 2006, hereinafter referred to as the "Agreement", wherein CONSULTANT agreed to provide certain services to the CITY as set forth therein;

WHEREAS, CONSULTANT has provided acceptable on-call quality assurance and quality control testing and inspection services pursuant to the Agreement; and

WHEREAS, the parties desire to amend the Agreement to extend the term and to clarify certain other provisions of the Agreement.

**AMENDMENT**

NOW, THEREFORE, as set forth herein, the parties hereto do mutually agree that the Agreement shall be amended as follows:

1. Section 7, COMPENSATION, is hereby deleted and replaced as follows:

**7. COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of one hundred thousand dollars (\$100,000) per year. All work shall be invoiced monthly, based on the schedule of billing rates attached hereto as Exhibit "A", with each project identified individually by project name and account number. The remaining unbilled balance of contract shall be shown on each invoice.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Engineer. CONSULTANT shall obtain approval by the City Engineer prior to performing any work that results in incidental

**On-Call Quality Assurance and Quality Control Testing and Inspection Services**

expenses to CITY.

2. Section 8, TIMING REQUIREMENTS, is hereby deleted and replaced by the following:

**8. TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement, and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the Engineer. This agreement shall expire on August 17, 2008 unless extended as provided below.

The City may grant an additional one-year extension administratively in an amount not to exceed \$100,000 based on CONSULTANT'S acceptable performance.

3. EXCEPT AS EXPRESSLY SET FORTH IN THIS AMENDMENT, THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT AND IS HEREBY RATIFIED AND REAFFIRMED.

4. **SIGNATURES.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the CONSULTANT and the CITY.

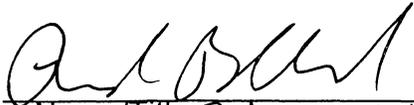
IN WITNESS WHEREOF, the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CONSTRUCTION TESTING & INSPECTION, INC.

CITY OF OCEANSIDE

By:   
Name/Title Thomas A. Gaeto

By: \_\_\_\_\_

By:   
Name/Title Rodney D. Ballard

APPROVED AS TO FORM:

93-0997190  
Employer ID No.

  
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On June 11, 2007 before me, Cindy Kopet, Notary Public, personally appeared Thomas A. Gaeto and Rodney D. Ballard, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

  
Signature of Notary Public



*Title of Document: Amendment 1 to Professional Services Agreement*  
*Number of Pages: 3*

## BASIC FEE SCHEDULE

Field Technician (Prevailing Wage)	\$71.00/hour
Laboratory Technician	\$55.00/hour
Registered Engineer	\$110.00/hour

*Expanded field and laboratory fee schedule is attached.*

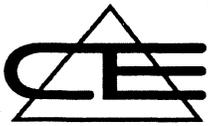


# CONSTRUCTION TESTING & ENGINEERING, INC.

1441 MONTIEL ROAD, SUITE 115 | ESCONDIDO, CA 92026 | 760.746.4955 | FAX 760.746.9806

## Expanded Schedule of Fees

	Price per Hour	Prevailing Wage
<b><u>PROFESSIONAL ENGINEERING STAFF</u></b>		
Principal Engineer / Geologist	\$130	
Senior Engineer / Geologist / Architect	\$120	
Project Engineer / Geologist / Architect	\$110	
Environmental Consultant / Registered Environmental Assessor	\$90	
Staff Engineer / Geologist / Architect	\$90	
Environmental Specialist	\$75	
Environmental Technician	\$60	\$71
<b><u>INSPECTION SERVICES &amp; QUALITY CONTROL</u></b>		
Pile Driving Inspector / Deep Foundation Inspector	\$75	\$75
Senior Soil Technician includes nuclear gauge or mobile laboratory	\$75	\$75
Soil Technician II includes nuclear gauge or mobile laboratory	\$60	\$71
Mechanical / Electrical Inspector	\$55	\$71
Registered Special Inspector (Concrete, Masonry, Welding, Pre-Stress, Fireproofing)	\$55	\$71
Field Technician I (ACI / Soil)	\$60	\$71
Concrete Technician (ACI)	\$55	\$71
Roofing / Waterproofing Inspector	\$55	
Roofing / Waterproofing Consultant	QUOTE	
Inspector of Record / DSA / OSHPD Inspector	QUOTE	
Quality Control Representative	QUOTE	
Submittal Reviewer	QUOTE	
QC Plan Preparation	QUOTE	
<b><u>NON-DESTRUCTIVE TESTING SERVICES</u></b>		
Non-Destructive Testing Inspector (Ultrasonic, magnetic particle, dye penetrate)	\$60	
Metallic Surface Coatings (Paint or Itumescescent Fireproofing)	QUOTE	
Radiographic (low power portable and laboratory available)	QUOTE	
<b><u>SPECIAL SERVICES:</u></b>		
Vertical Coring / Sawing Operator & Equipment (Horizontal extra)	\$65	
Floor Flatness (Includes reports and Registered Engineer Certification)	\$95	
Mobilization / Demobilization - flat rate	\$100	
Reinforcing Steel Location	\$65	\$71
Anchor Pull Tests - up to 30 tons	\$60	\$71
Batch Plant Inspector	\$65	\$71
Procedure Qualification per AWS, ASME or Military Standards	QUOTE	
<b><u>SUPPORT SERVICES:</u></b>		
Certificate of Completion	\$250	
Draftsman	\$60	
Express Mail (FEDEX/UPS) (minimum)	\$30	
Facsimile (each page)	\$1	
File Search, re-issue of report, copies (minimum)	\$50	
Pickup/Delivery (50 mile radius of CTE office, NIC Shotcrete Panels)	\$40	
Word Processing/Secretarial (per hour)	\$45	
<b><u>COURT APPEARANCE AND DEPOSITIONS:</u></b>		
Senior Professional Preparation, Deposition or Testimony	\$250	
Travel & Expenses	Actual + 15%	
Evidence Storage (per month)	\$50	



# CONSTRUCTION TESTING & ENGINEERING, INC.

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## Expanded Schedule of Fees

Test Procedure	Price per Specimen	ASTM Designation	Other Method Used
<b>SOILS</b>			
<b>SOILS:</b>			
California Bearing Ratio (CBR), Includes Maximum Density Curve	\$360	D 1883	---
Cement Treated Base, Laboratory Design - Soil Cement, Each Set	\$435	D-558	---
Cement Treated Base, Sample Fabrication (Set of Three)	\$120	D-558	CTM 312
Cement Treated Base, Compression Test	\$25	---	---
Chloride Content of Soil	\$70	---	---
Consolidations - Per Point	\$200.00 or \$65.00 per point	D 2435	---
Direct Shear Test	\$195 to \$245	D 3080	---
Expansion Index	\$180	D 4829	UBC 18-2
Hydrometer Analysis	\$100	D-422	---
Hydrometer Analysis with coarse & fine grade	\$230	---	---
Laboratory Compaction Test (Moisture Density-Each Curve)	\$190	D 1557	CTM 216
Laboratory Compaction Test Requiring Rock Correction	\$225	D 1557 / D 4718	---
Moisture Content	\$35	D 2216	---
Plasticity Index / Liquid Limit/Atterburg Limits	\$100	D 4318	---
Permeability Test - Constant Head			
Fine Grained Soil	\$210	D-5084	---
Granular Soil	\$350	D 2434	---
Other	QUOTE	D 4318	---
R - Value (Minimum 3 pts.)	\$190	D-2844	CTM 301
Resistivity and pH of Soil	\$150	D-4972	CTM 643
Sand Equivalent	\$100	D 2419	CTM 217
Shrinkage Limit	\$90	D 427	---
Sodium Sulfate Soundness (Per Size Fraction)	\$70	C 88	---
Soil Classification w/ Atterburg & Gradation	\$245	D 2487	---
Sulphate Content of Soil	\$80	---	---
<b>AGGREGATES:</b>			
Absorption Test, Coarse Aggregate	\$25	C 127	---
Absorption Test, Fine Aggregate	\$25	C 128	---
Aggregate Conformance Testing for State of California Projects (Includes: Sieve Analysis, Specific Gravity, No. 200 Wash, Organic Impurities, Unit Weight)	\$210	---	---
Clay Lumps and Friable Particles	\$85	C 142	---
Cleanness Value	\$70	---	CTM 227
Crushed Particles, Percent	\$110	---	CTM 205
Durability Index, Coarse Aggregate	\$95	D 3744	CTM 229
Durability Index, Fine Aggregate	\$70	D 3744	CTM 229
Los Angeles Rattler	\$150	C 131 or C 535	CTM 211
Mortar making properties of fine aggregates	\$225	C 87	---
Organic Impurities in Sand	\$45	C 40	---
Sieve Analysis (Gradation), Coarse Aggregate	\$50	C 136	---
Sieve Analysis (Gradation), Fine Aggregate (Including Wash)	\$75	C 136	---
Specific Gravity, Fine Aggregate	\$50	C 128	---
Specific Gravity, Coarse Aggregate	\$40	C 127	---
Unit Weight per Cubic Foot, Voids in Aggregate	\$50	C 29	---



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Expanded Schedule of Fees			
Test Procedure	Price per Specimen	ASTM Designation	Other Method Used
<b>MATERIALS</b>			
<b>ASPHALT CONCRETE:</b>			
Asphalt Mix Design	Quote	Marshall & Hveem	---
Asphalt Mix Design Review	\$135	---	---
Extraction, % Asphalt (Including gradation)	\$130	D-6307 / C-136	CTM 310/CTM 382
Film Stripping	\$65	---	CTM 302
Hveem Stability & Unit Weight	\$150	D 1560 / D 1561	CTM 304, 308 & 366
Marshall Stability, Flow & Unit Weight ( Three Specimens)	\$150	D 1559 / D 2726	---
Maximum Theoretical Unit Weight (Rice Specific Gravity)	\$80	D 2041	---
Percent Swell	\$80	---	CTM 305
Unit Weight Compacted Sample or Core (Bulk Specific Gravity)	\$50	D 2726	CTM 308
Unit Weight Sample Requiring Compaction	\$115	D 2726	CTM 304 & 308
<b>CONCRETE:</b>			
Cement Testing Compression (Cubes)	QUOTE	C-109 / C-109M	---
Compression Tests, 6x12 Cylinder	\$20	C 39	---
Compression Tests, Gunite/Shotcrete Panels, 3 Cut Cores per Panel (Set)	\$140	C 39	---
Compression Tests, Cores (Includes Sample Preparation)	\$45	C 42	---
Compression Tests, Lightweight Concrete Fill	\$30	C 495	---
Concrete Flexural Test, 6x6x18	\$40	C 293, C 78	---
Concrete Mix Design (Includes Aggregate Testing)	\$280	---	---
Concrete Mix Design (Revision or Review)	\$125	---	---
Drying Shrinkage (3 Specimens-28 Days)	\$190	C 157 (Mod)	---
Gunite Panel, 3 Cores	\$180	C-42	---
Gunite Panel, 4 Cores	\$210	C-42	---
Modulus of Elasticity, Static	\$78	C 469	---
Splitting Strength Test	\$60	C 496	---
Trial Batch, Includes Mix Design, Aggregate Testing & Six Compression Tests	\$525	---	---
Unit Weight, Lightweight Concrete Fill	\$30	C 495	---
<b>MASONRY:</b>			
Absorption Test, Brick, 7-Day (Per Block, 3 block minimum)	\$45	C 67	---
Absorption Test, Brick, 24-Hour Submersion	\$25	C 67	---
Absorption Test, Brick, 5-Hour Boiling	\$40	C 67	---
Composite Prism (under 400,000 lbs.), Half Size 8 x 16 x 8	\$85	E 447	UBC 21-17
Composite Prism (under 400,000 lbs.), Full Size 8 x 16 x 16	\$100	E 447	UBC 21-17
Compression Test, Brick	\$30	C 67	---
Compression Test, Blocks Larger Than 8x8x16	\$40	C 140	---
Compression Test, Blocks Less Than or Equal to 8x8x16	\$35	C 140	---
Compression Tests, Grout	\$25	C 1019	UBC 21-18
Compression Tests, Mortar, 2x4 cylinder UBC	\$25	C 780	UBC 21-16
Conformance Package	\$350	C 90	---
Efflorescence, Block with Mortar	\$40	C-90	---
Efflorescence, Block Only	\$30	C-90	---
Efflorescence, Brick only	\$30	C 67	---
In-Place Shear Test (per test)	\$80	---	UBC 21-6
Linear Shrinkage	\$100	C 426	---
Modulus of Rupture, Brick	\$30	C 67	---
Moisture as Received, Brick	\$25	C 67	---
Saturation Co-Efficient (Includes Absorption) Brick	\$40	C 67	---
Shear Test, cores (excludes sample preparation)	\$100	---	Title 24
Compression Test Cores (includes sample preparation)	\$40	C 42	Title 24
Unit Weight & Absorption, Block	\$40	C 140	---



# CONSTRUCTION TESTING & ENGINEERING, INC.

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## Expanded Schedule of Fees

Test Procedure	Price per Specimen	ASTM Designation	Other Method Used
<b>MATERIALS</b>			
<b>STEEL:</b>			
High Strength Bolt, Nut & Washer Conformance (Wedge Tensile, Proof Load, Hardness)	\$100	A-325	---
Mechanical Tests, Hardness Test, Rockwell	\$50	---	---
Prestressed Steel, Tensile Test, Strand (7 wire)	\$90	---	---
Reinforcing Steel, Tensile Test - No. 11 Bars & Smaller	\$30	A 615	---
Reinforcing Steel, Tensile Test - No. 14 Bars & Larger (To Min. Require. Only)	\$50	A 615	---
Mechanically Spliced Reinforcing Steel	\$80	---	---
Spray Applied Fireproofing Density Tests Oven Dry Method	\$75	E 605	UBC 7-6
Structural Steel, Tensile Test - Up to 200,000 lbs.	\$40	A 370	---
Structural Steel, Bend Test.	\$30	---	---
Structural Steel, Pipe Flattening Test	\$30	---	---
Welded Specimens, Tensile Test - No. 11 Bars & Smaller	\$32	---	---
Welded Specimens, Tensile Test - No. 14 Bars (To Min. Require. Only)	\$60	---	---
Welded Specimens, Tensile Test - No. 18 Bars (To Min. Require. Only)	\$80	---	---
Welded Specimens, Tensile Testing - Mechanically Spliced Bar	\$80	---	---
<b>ROOFING:</b>			
Asbestos Evaluation (per ply)	\$40	---	---
Asphalt Softening Point	\$150	---	---
Roofing Material Analysis, With Surfacing	\$450	D 2829	---
Roofing Material Analysis, Without Surfacing	\$225	D 3617	---
Roofing Tile, Absorption (set of 5)	\$150	---	---
Roofing Tile, Strength Test (set of 5)	\$150	---	---
<b>WELDING CERTIFICATION</b>			
American Welding Society (AWS D1.1)	---	---	---
Limited Thickness Plate (per position)	\$200	---	---
Unlimited Thickness Plate (per position)	\$230	---	---
Pipe (per position)	\$230	---	---
American Welding Society (AWS D1.4)	---	---	---
Bar Sizes #3 through #9 (each)	\$200	---	---
Bar Sizes #10 through #11 (each)	\$230	---	---
Bar Sizes #14 through #18 (each)	\$250	---	---
American Society of Mechanical Engineers (ASME)	---	---	---
Plate or Pipe Procedure Qualification (each)	\$550	---	---
Plate or Pipe Welder Qualification (each)	\$550	---	---
American Welding Society (AWS D1.3)	---	---	---
Light Gauge Metal (includes butt and plug weld)	\$180	---	---
Procedure Qualification per AWS, ASME or Military Standards	QUOTE	---	---
Fillet Weld Test (Break and Etch Test)	\$180	---	---
Fillet Weld Test Plates	\$30	---	---
Ultrasonic Testing of Weld Coupons	\$90	---	---
Witness time, If Required	\$55	---	---



**Expanded Schedule of Fees**

**Testing Samples:** A preparation charge will be added to all samples submitted to the laboratory that are not ready for testing. This preparation charge will be based on the actual time required and at the laboratory technician's rate of \$50.00 per hour. There will be a 50% premium charge for "RUSH/PRIORITY" testing. This testing laboratory agrees to exercise reasonable care in obtaining, preserving, and caring, for the samples to be tested, but assumes no responsibility for damages, either direct or consequential, which arise or are alleged to arise from loss, damage or destruction of samples due to circumstances beyond this testing laboratory's control. Samples are discarded after testing unless requested otherwise in writing by the client. A per month fee is charged for retained samples.

**Per Diem and Travel Expenses:** Minimum \$ 75.00 per day or Actual cost + 15%

**Scheduling:** A minimum of 24 hours notice is required to schedule personnel.

**Overtime Rates:** Our rates are based on an 8 hour work day between the hours of 6:00 AM & 4:30 PM M-F. A premium of 1.5 times the quoted rates for the first 8 hours and 2.0 times there after will be charged for work outside of these hours. Saturdays w

**Minimum Charges:** For inspection callout between 0 & 4 hours a minimum charge of 4 hours will be applied. For inspection callout between 4 & 8 hours, an 8 hour minimum charge will be applied. A 2 hour minimum will apply for unscheduled cancellations or showups

**The following are CTE Inc. holidays:**

New Year's Day      Labor Day  
Memorial Day        Thanksgiving Day  
Independence Day    Christmas Day

Should a Holiday fall on a Saturday or Sunday the closest previous or following regular work day shall be considered the holiday.

**Mileage:** Mileage will be charged at \$0.40 per mile for services outside a 40 mile radius of this office.

**Outside Services/Subcontractors:** Cost plus 20% will be charged for any work not directly performed by CTE Inc. or for any materials procured.

**Rate Increases:** Should the project or any portion thereof be subject to prevailing wages, the field service rates herein shall be increased by a minimum 20%. CTE reserves the right to periodically increase all rates indicated herein.

CITY OF OCEANSIDE

**COPY**

**PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: On-Call Quality Assurance and Quality Control Testing and Inspection Services**

THIS AGREEMENT is made and entered into this 21<sup>st</sup> day of AUGUST, 2006, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and CONSTRUCTION TESTING AND ENGINEERING, INC., hereinafter designated as "CONSULTANT."

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **SCOPE OF WORK.** The project is more particularly described as follows:  
QA/QC Testing and Inspection Services shall include:
  1. Perform field/laboratory testing and inspection as required per the Standard Specifications for Public Works Construction, 2006 Edition (Greenbook), the State of California Department of Transportation Standard Specifications (latest edition), the City of Oceanside Quality Assurance Program Manual and the Project Plans and Specifications as directed by the Project Manager. Services shall include the field/laboratory testing and inspection of all construction materials and methods, but not limited to, Tire Modified Asphalt Concrete (TMAC), Rubberized Emulsified Aggregate Slurry (REAS), Asphalt Grinding, Asphalt Patching, Crack Sealing, Class II Aggregate Base and Subgrade Preparation/Compaction, Portland Cement Concrete Testing, Concrete Batch Plant Inspection, Soil Compaction, Welding Inspection, Structural Steel Inspection, Masonry Construction, and Steel Fabrication and Placement.
  2. Provide the City's project manager with daily reports and daily diaries detailing CONSULTANT'S field activities, problems encountered, solutions made, quantities and a summary of testing results.
  3. Upon completion of construction, prepare a signed Quality Assurance Report summarizing the field activities and laboratory testing results.
  
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Engineer. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer.

**[On-Call QA/QC Testing and Inspection Services]**

CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

4. **LIABILITY INSURANCE.**

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2. CONSULTANT shall maintain liability insurance in the following minimum limits:

**Comprehensive General Liability Insurance**  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

**Commercial General Liability Insurance**  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<b><u>Automobile Liability Insurance</u></b>	<b>\$ 1,000,000</b>
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\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require

**[On-Call QA/QC Testing and Inspection Services]**

additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

- 4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in

**[On-Call QA/QC Testing and Inspection Services]**

connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct, negligent acts, errors or omissions or wrongful acts of conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of one hundred thousand dollars (\$100,000). All work shall be invoiced monthly with each project identified individually (showing balance of contract).

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Engineer. CONSULTANT shall obtain approval by the City Engineer prior to performing any work, which results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the Engineer. This agreement shall take effect when all signatures have been executed, and shall be valid for a period of one year. Two one-year extensions may be granted on a year-to-year basis, based on acceptable performance, for a total maximum term of three years.

- 9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.
- 10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

- 11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
- 12. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures this 21<sup>st</sup> day of August, 2006.

Construction Testing & Engineering, Inc.

CITY OF OCEANSIDE

By: [Signature] Vice President  
Name/Title

By: \_\_\_\_\_  
Barry E. Martin, Interim City Manager

By: [Signature]  
Name/Title

APPROVED AS TO FORM:  
[Signature]  
City Attorney

93-0997190  
Employer ID No.

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

STATE OF California

COUNTY OF San Diego

On July 27, 2006, before me, Cindy Kopet, Notary Public,

personally appeared Rodney D. Ballard and Thomas A. Gaeto →  
Name(s) of Signer(s)

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/they executed the same in ~~his~~/~~her~~/their authorized capacity(ies), and by ~~his~~/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Cindy Kopet  
Signature of Notary Public



(Seal)

Title or Type of Document Professional Services Agreement

Number of Pages N/A