

STAFF REPORT



ITEM NO. 11
CITY OF OCEANSIDE

DATE: August 16, 2006

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF A 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 MANAGER TO SIGN THE AGREEMENT**

SYNOPSIS

Staff recommends that the City Council approve a one year professional services agreement with Construction Testing and Engineering, Inc., of Escondido in the amount of \$100,000 for on-call quality assurance and quality control (QA/QC) testing and inspection services in the Public Works Department, and authorize the City Manager to execute the agreement.

BACKGROUND

The Public Works Department currently contracts 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 ensure that it is provided. Larger projects will continue to have QA/QC testing and inspection included in their scope of work.

ANALYSIS

Staff has selected Construction Testing and Engineering (CTE) because of their experience on City projects. CTE has been providing testing and inspection services to the City for eight years and staff is extremely pleased with their quality of work and responsiveness to our needs. Staff sent Request for Proposals (RFPs) to five firms, and four firms submitted proposals. Based on previous experience, knowledge of applicable requirements and quality of work, staff recommends CTE for on-call QA/QC testing and inspection services.

FISCAL IMPACT

The cost of the QA/QC testing and inspection services will be paid from each project's business account unit. Adequate monies are available in the FY 2006-08 approved budgets.

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 a professional services agreement with Construction Testing and Engineering, Inc., in the amount of \$100,000 for on-call quality assurance and quality control (QA/QC) testing and inspection services in the Public Works Department, and authorize the City Manager to execute the agreement.

PREPARED BY:


Robert H. Reinen
Associate Engineer

SUBMITTED BY:


Barry E. Martin
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant to the City Manager

Peter Weiss, Public Works Director



← for 

Exhibit A - Professional Services Agreement
Exhibit B - Firms Solicited

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

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

THIS AGREEMENT is made and entered into this ____ day of _____, 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

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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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, tortuous 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 _____ day of _____, 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.

EXHIBIT B

FIRMS SOLICITED

<u>Firm</u>	<u>Address</u>
1. Construction Testing and Inspection	Escondido
2. MTGL	Oceanside
3. PSI	San Diego
4. Ninyo & Moore	San Diego
5. Kleinfelder	San Diego