

STAFF REPORT



ITEM NO. 8
CITY OF OCEANSIDE

DATE: September 10, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **APPROVAL OF AMENDMENT 2 IN THE AMOUNT OF \$100,000 TO THE PROFESSIONAL SERVICES AGREEMENT WITH CONSTRUCTION TESTING ENGINEERING, INC., FOR ON-CALL QUALITY ASSURANCE AND QUALITY CONTROL TESTING AND INSPECTION**

SYNOPSIS

Staff recommends that the City Council approve Amendment 2 in the amount of \$100,000 to the Professional Services Agreement with Construction Testing Engineering, Inc., (CTE) of Escondido for on-call quality assurance and quality control (QA/QC) testing and inspections services for the Engineering Division, extending the term of the agreement from August 17, 2008, to August, 17, 2009; and authorize the City Manager to execute the amendment.

BACKGROUND

On August 16, 2006, the City Council approved a professional services agreement with CTE for QA/QC testing and inspection services. The agreement provided for two annual renewals at the City's option.

On July 18, 2007, the City Council approved Amendment 1, which renewed the professional services agreement for up to \$100,000 in services for a second year. Amendment 2 provides for a third and final renewal of this professional services agreement.

ANALYSIS

Before recommending approval of CTE's initial professional services agreement in 2006, staff invited proposals from San Diego County engineering firms. Four firms responded with qualification statements and hourly rate sheets. CTE was reviewed by staff as being the most qualified and the least expensive on an hourly basis for the most common service: \$71 per hour for a field technician or inspector. (Another firm offered the same service at \$55 per hour, but the City could not accept it because the rate was not based on the prevailing wages). For the work under Amendment 2, which is two years after the original agreement, CTE will increase its rate from \$71 to \$75 per hour to recover a corresponding increase in prevailing wages.

The primary need of these services is the Annual Overlay and the Annual Slurry Seal projects, but many smaller Capital Improvements projects also require testing and inspection. Providing on-call QA/QC testing and inspection will reduce staff time to procure these services. Larger projects will continue to have QA/QC services included in their scope of work.

CTE provided testing and services under this professional services agreement with the City for the last two years. In prior years, CTE's service fees were \$56,880 for 2006 and \$74,609.50 for 2007.

FISCAL IMPACT

The cost of the QA/QC testing and Inspection services will be paid from each project's business account unit. (see Attachment "A")

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve Amendment 2 in the amount of \$100,000 to the Professional Services Agreement with Construction Testing Engineering, Inc., (CTE) of Escondido for on-call quality assurance and quality control (QA/QC) testing and inspections services for the Engineering Division, extending the term of the agreement from August 17, 2008, to August, 17, 2009; and authorize the City Manager to execute the amendment.

PREPARED BY:



Ron Perdue
Public Works Inspector

SUBMITTED BY:



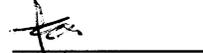
Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



George Buell, Development Services Director



Scott O. Smith, City Engineer



Margery M. Pierce, Neighborhood Services Director



Teri Ferro, Financial Services Director



Attachments:

- Attachment "A"
- Professional Services Agreement
- Amendment 1
- Amendment 2

ATTACHMENT A

PROJECT NAME	BUSINESS UNIT
Street Restoration	755216
El Camino Real Median	775215
Sidewalk and ADA Improvements	755239
Street Restoration and Overlay	757542
Misc. Street Projects	757790
Wilshire Road Reconstruction	757791
Citywide Sidewalk Repair	755248
Rockledge Alley Improvement	755256
Road Maintenance Projects	754015
Lucky Street Storm Drain	755221
South Coast Hwy and Vista Way Improvement	755224
Godfrey Street Sidewalk Improvement	755225
Retaining wall at Oceanside Blvd. and ECR	755226
Oceanside Blvd. Bus Stop Upgrades	755227
Neighborhood Storm Drains	755228
Sidewalk Repair	755229
Loma Alta Creek at ECR Detention Basin	817451
Loma Alta Creek at Rancho del Oro Detention Basin	817452
Henie Hills Storm Drain	817409
Park Enhancements	845431
Specialty Parks	845650
Gateway Projects	417821
Coast Highway Streetlights	878883
Sunset Market Streetlights	848886

CITY OF OCEANSIDE
AMENDMENT 2
TO
PROFESSIONAL SERVICES AGREEMENT

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

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment"), dated September 3, 2008, for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and CONSTRUCTION TESTING AND ENGINEERING, INC., hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated August 16, 2006, and Amendment 1 thereto, dated July 18, 2007, 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 the contract shall be shown on each invoice.

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

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 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, 2009.

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.

CONSTRUCTION TESTING AND ENGINEERING, INC.

CITY OF OCEANSIDE

By: [Signature] / Pres
Name/Title

By: _____
Peter A. Weiss, City Manager

By: [Signature]
Name/Title

APPROVED AS TO FORM:

93-0997190
Employer ID No.

[Signature], ASST.
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

STATE OF CALIFORNIA

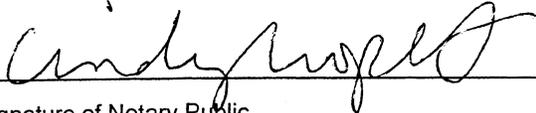
COUNTY OF SAN DIEGO



On August 27, 2008, before me, Cindy Kopet, Notary Public, personally appeared Thomas Gaeto and Rodney Ballard, who proved to me on the basis of satisfactory evidence 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 that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public



Document Title: Amendment 2 to Professional Services Agreement

BASIC FEE SCHEDULE

Field Technician (Prevailing Wage)	\$75.00/hour
Laboratory Technician	\$55.00/hour
Registered Engineer	\$110.00/hour

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 21st 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

<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]

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 21st 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: _____
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

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