

# STAFF REPORT



ITEM NO. 17  
CITY OF OCEANSIDE

DATE: June 25, 2014  
TO: Honorable Mayor and City Councilmembers  
FROM: Development Services Department  
SUBJECT: **PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING INSPECTION SERVICES FOR THE 2013-14 ANNUAL OVERLAY PROJECT**

## **SYNOPSIS**

Staff recommends that City Council approve a Professional Services Agreement with Construction Testing & Engineering, Inc. of Escondido (CTE) in the amount of \$86,000 for engineering inspection services for the 2013-14 Annual Overlay Project, and authorize the City Manager to execute the agreement.

## **BACKGROUND**

In August 2012 a biannual request for proposals (RFP) was advertised for engineering inspection services on an "as-needed" basis to augment public works inspection staff. Twelve firms responded by providing proposals.

In May 2014 staff confirmed resumes and fee schedule from the proposing firms based on current availability of inspectors uniquely qualified for the inspection of the overlay project. (Attachment A)

## **ANALYSIS**

The City will need approximately 1012 inspector hours to monitor and document the Annual Overlay Project.

Inspection of the overlay project requires staff to work various day and night shifts. The work of the overlay project cannot be adequately monitored by the City's public works inspectors because of their current workload.

CTE's inspector was determined to be most qualified for the project based on technical expertise and previous comparable work.

The initial proposal and the updated resume provided by CTE was comprehensive, provided amplifying information, and addressed all the City's requirements.

This project is funded by TransNet, and is not subject to prevailing wage requirements. However, due to the use of the asphalt mix containing recycled tires, the project is eligible for CalRecycle's Rubberized Pavement Grant Program by the State of California. As the project will be reimbursed by this grant for \$234,640, it is more advantageous for the City to comply with the State's prevailing wage requirements.

**FISCAL IMPACT**

The proposed contract amount with CTE is \$86,000. The Annual Overlay/Street Restoration (902754200212) project has an available balance of approximately \$6,414,786. Therefore; sufficient funds are available in the FY 2013-14 CIP budget to complete the project with the funding source coming from TransNet (Fund 212) half cent sales tax. The total contract amount of \$86,000 is included in the FY2013-14 budget in account 902754200212.5703.10600.

**INSURANCE REQUIREMENTS**

The City's standard insurance requirements will be met.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

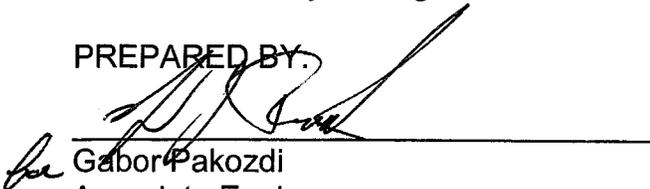
**CITY ATTORNEY'S ANALYSIS**

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

**RECOMMENDATION**

Staff recommends that City Council approve a Professional Services Agreement with Construction Testing & Engineering, Inc. of Escondido (CTE) in the amount of \$86,000 for engineering inspection services for the 2013-14 Annual Overlay Project, and authorize the City Manager to execute the agreement.

PREPARED BY:

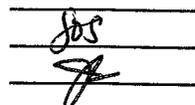
  
Gabor Pakozdi  
Associate Engineer

SUBMITTED BY:

  
Steven R. Jepsen  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager  
Scott O. Smith, City Engineer  
James R. Riley, Financial Services Director

  
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Attachment A – Proposal Results  
Attachment B – Professional Services Agreement

**Attachment A – Proposal Results**

<b><u>COMPANY</u></b>	<b><u>RATING</u></b>
CTE	89
Psomas	81
Harris	80
Hill	79
Smith-Emery	77
Vali Cooper	77
Caltrop	76
Dudek	69

## CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

**PROJECT: Engineering Inspection Services for the 2013-14 Annual Overlay**

**CIP ACCT: 902754200212**

THIS AGREEMENT, dated June 25, 2014, 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 & Engineering, Inc., hereinafter designated as "CONSULTANT."

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

- SCOPE OF WORK.** The project is more particularly described as follows: The CONSULTANT shall provide Engineering Inspection Services for the 2013-14 Annual Overlay Project. The Consultant shall provide a full-time Inspector for the duration of the overlay work. The Inspector shall have his/her own transportation and equipment necessary for the work. The Inspector shall be available for night shift work on major streets. The Inspector shall be familiar with plans and specifications prior to commencement of work; enforce measures to protect public health, safety, and convenience; enforce traffic control measures; prepare detailed daily diary including equipment usage and labor; keep track of subcontractors' work; keep record of contract time and delays; conduct and record interviews for compliance with prevailing wage requirements; collect and verify delivery tickets for compliance with specifications and recycled rubber content; enforce compliance with NPDES and State Water Quality control Board regulations (BMPs); issue correction and stop work notices if necessary; participate in preconstruction and weekly progress meetings; measure and record constructed quantities; and perform other related duties assigned by the Engineer or Project Manager.
- 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. 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.

Engineering Inspection Services for the 2013-14 Annual Overlay

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 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.

## Engineering Inspection Services for the 2013-14 Annual Overlay

- 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 CONSULTANT shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement 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, at minimum, a Certificate of Insurance and applicable endorsements, 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 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.

Engineering Inspection Services for the 2013-14 Annual Overlay

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law (including, without limitation, California Civil Code section 2782.8), 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 CONSULTANT'S work, including the negligent acts, errors or omissions or wrongful acts or 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 founded upon, 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. **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the CONSULTANT under this Agreement shall be the property of the CITY. The CITY agrees to hold the CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the plans and specifications and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computation and other documents, prepared or provided by the CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting CONSULTANT's participation in this project.
8. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$86,000.

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. The Inspector's prevailing wage compensation shall be \$85.00 per hour.

9. **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 within 127 working days.

Engineering Inspection Services for the 2013-14 Annual Overlay

10. **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.
11. **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.

12. **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.
13. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party. If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.
14. **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.

Engineering Inspection Services for the 2013-14 Annual Overlay

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 on the dates set forth below.

Construction Testing & Engineering, Inc.

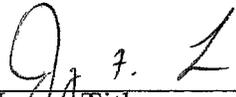
CITY OF OCEANSIDE

By:   
Name, Title  
Thomas Gaeto, President

By: \_\_\_\_\_  
City Manager

Date: Jun. 16, 2014

Date: \_\_\_\_\_

By:   
Name, Title Jay Lynch, Secretary

APPROVED AS TO FORM:

Date: Jun. 16, 2014

, ASST.  
City Attorney

93-0997190  
Employer ID No.

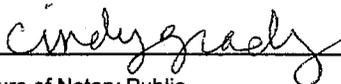
**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

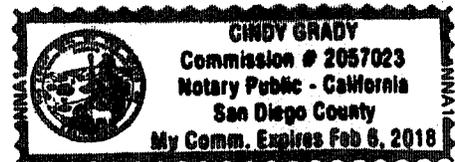
STATE OF CALIFORNIA }  
COUNTY OF SAN DIEGO }

On June 16, 2014, before me, Cindy Grady, Notary Public, personally appeared Thomas Gaeto and Jay Lynch, 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.

  
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Signature of Notary Public



*Document Title: City of Oceanside Professional Services Agreement  
Engineering Services for the 2013-14 Annual Overlay*