

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

146A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
December 29, 2010

SUBJECT: Engineering Services Agreement for Highway Geotechnical and Materials Testing Services between the County of Riverside and the firm, C.H.J., Inc.

RECOMMENDED MOTION:

1. Ratify the attached Engineering Services Agreement between the County of Riverside Transportation Department and C.H.J., Inc. to provide Highway Materials testing for a period of December 15, 2010 through June 30, 2013 for an annual contract maximum amount not to exceed \$ 360,000 per year, and;
2. Authorize the Chairman of the Board to execute the same.

Juan C. Perez
Director of Transportation

Departmental Concurrence

(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 360,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11
SOURCE OF FUNDS: Gas Tax, Measure A, TUMF Fees, RBBD Fees, Developer Fees, Permit Fees				Positions To Be Deleted Per A-30 <input type="checkbox"/>
				Requires 4/5 Vote <input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
DATE: 12/22/10
BY: MARSHAL VICTOR

Policy
 Consent
 Policy
 Consent
 Dept't Recomm.:
 Per Exec. Ofc.:

Prev. Agn. Ref.

District: All

Agenda Number:

3.74

The Honorable Board of Supervisors

RE: Engineering Services Agreement for Highway Geotechnical and Materials Testing Services between the County of Riverside and the firm, C.H.J., Inc.

December 29, 2010

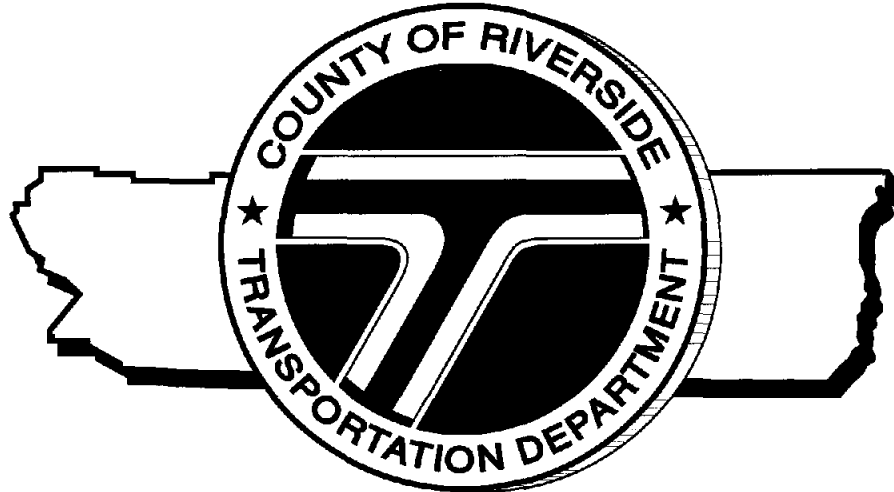
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BACKGROUND: The Transportation Department needs additional Highway Materials Testing and Geotechnical Services on county roads and structures to help meet the demands of construction activity. A request for proposals was advertised on the County of Riverside's website. Seventeen (17) firms submitted proposals, and the top five (5) firms were interviewed. A panel of representatives from the Riverside County Transportation Department evaluated the written proposals and conducted the interviews.

C.H.J., Inc. has been selected as one of three (3) firms to provide On-Call Highway Geotechnical Materials Testing Services. This contract is for an amount not-to-exceed \$360,000 annually. The term is for a three (3)-year term with the option to renew two (2), one (1) year terms. These On-Call Highway Materials Testing Services will afford the Department the ability to provide geotechnical and materials testing more efficiently, as well as obtaining specific testing expertise in areas that will supplement our staff resources.

The terms of the agreement also provide the County with the option to terminate the agreement within 30 days without cause. All associated contract costs would be fully funded by Gas Tax, Measure "A", TUMF Fees, RBBD Rees, Developer Fees and Permit Fees. No net County costs would be incurred as a result of this contract.

ENGINEERING SERVICES AGREEMENT



for

**Highway Geotechnical Engineering and Materials Evaluation and
Testing Services**

between

COUNTY OF RIVERSIDE • TRANSPORTATION DEPARTMENT

and

C.H.J. , Incorporated

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1 **ENGINEERING SERVICES AGREEMENT**

2 COUNTY OF RIVERSIDE, hereinafter referred to as "COUNTY", and C.H.J. INCORPORATED, hereinafter
3 referred to as "ENGINEER", located at the following addressees:

4 County of Riverside • Transportation Department C.H.J. , Inc.
5 4080 Lemon Street, 8th Floor 77-564 Country Club Drive, Suite 122
6 Riverside, CA 92502 Palm Desert, CA 92211

7 do hereby agree as follows:

8 **ARTICLE I • DESIGNATED CONTACTS**

9 Coordination of ENGINEER, and COUNTY activities will be accomplished through an ENGINEERING PROJECT
10 MANAGER, and a COUNTY PROJECT MANAGER.

11 The ENGINEERING PROJECT MANAGER for ENGINEER will be:

12 Mike Foscolos

13 The COUNTY PROJECT MANAGER for COUNTY will be:

14 Gary Morton

15 **ARTICLE II • PROJECT DEFINITION**

16 ENGINEER shall furnish all technical and professional services including labor, material, equipment,
17 transportation, supervision, and expertise to fully and adequately perform and complete the covenants set forth in
18 Appendix A, Scope of Services, which is attached hereto and incorporated herein by reference. All services and
19 deliverables associated with the performance and accomplishment of the covenants described in the Scope of
20 Services is hereinafter collectively referred to as the "PROJECT".

21 **ARTICLE III • COOPERATIVE AGENCIES**

22 **A. Lead Agency**

23 COUNTY is designated as the lead agency for PROJECT and is working cooperatively with other
24 agencies in the effort to complete PROJECT.

25 **B. Cooperative Agencies**

26 The cooperating agencies are listed below and will hereinafter be collectively referred to as the "AGENCIES".

27 Caltrans
28
29

1 **C. COUNTY Standards**

2 All deliverables shall be prepared in accordance with the current COUNTY practices, regulations, policies,
3 procedures, manuals and standards where applicable. All deliverables are subject to review and
4 approval by COUNTY.

5 **ARTICLE IV • CONDITIONS**

6 **A. Notifications**

7 All notices hereunder and communications regarding interpretation of the terms of this contract and
8 changes thereto shall be effected by the mailing thereof by registered or certified mail, return receipt
9 requested, postage prepaid and addressed to the attention of the ENGINEERING PROJECT MANAGER
10 or the COUNTY PROJECT MANAGER at the respective addresses provided on page one of this
11 contract.

12 **B. Assignment**

13 Without written consent of COUNTY, this agreement is not assignable by ENGINEER either in whole or in
14 part.

15 **C. Subcontracts**

- 16 1. ENGINEER shall perform the services contemplated with resources available within its own organization.
17 No portion of the services pertinent to this contract shall be subcontracted without written authorization by
18 the COUNTY PROJECT MANAGER, except that which is expressly identified in this contract.
- 19 2. In the event ENGINEER subcontracts any portion of ENGINEER'S duties under this agreement,
20 ENGINEER shall require its subcontractors to comply with the terms of this contract in the same manner
21 as required of ENGINEER including, but not limited to; indemnification of the COUNTY, requiring the
22 same insurance of Subcontractors as required of ENGINEER, and having Subcontractor's insurance
23 name the COUNTY as Additional Insured for each type of insurance where this Agreement requires
24 ENGINEER'S insurance to name COUNTY as Additional Insured.

25 **D. Modifications**

- 26 1. This contract may be amended or modified only by mutual written agreement of the parties. No alteration
27 or variation of the terms of this contract will be valid unless made in writing and signed by the parties
28 hereto and no oral understanding or agreement not incorporated herein, will be binding on any of the
29 parties hereto.

- 1 2. There shall be no change in the ENGINEERING PROJECT MANAGER or key members of the PROJECT
2 team without prior written approval by the COUNTY PROJECT MANAGER.

3 **E. COUNTY Directives**

4 ENGINEER shall receive contract directions and interpretations from the COUNTY PROJECT
5 MANAGER.

6 **F. Liability**

- 7 1. ENGINEER has total responsibility for the accuracy and completeness of all testing data, documentation,
8 calculations, maps and reports prepared for this PROJECT and shall check all such material accordingly.
9 The accuracy of test data will be limited to published limitations and acceptable ranges of accuracy and
10 precision of the field and laboratory test methods. Due to the nature of this testing, variations in test
11 results are likely to occur. As a result, the accuracy of specific field and laboratory tests is dependent on
12 the precision of the published test methods. The testing data and reports will be reviewed by the
13 COUNTY. The responsibility for accuracy and completeness of such items remains solely that of
14 ENGINEER. Services provided by ENGINEER under this Agreement will be performed in a manner
15 consistent with the degree of care and skill ordinarily exercised by members of the same profession
16 currently practicing under similar circumstances.
- 17 2. The accuracy of the testing data, calculations, maps, reports and other documents furnished in
18 accordance with the Scope of Services shall meet the criteria for acceptance and be a product of neat
19 appearance, well organized, technically and grammatically correct, checked and having the preparer and
20 checker identified. The minimum standard of appearance, organization and contents shall be of similar
21 types produced by COUNTY.
- 22 3. The page identifying preparers of engineering reports, the title sheet for specifications and each sheet of
23 plans, shall bear the professional seal, certificate number, registration classification, expiration date of the
24 certificate, and signature of the professional engineer(s) responsible for their preparation.
- 25 4. COUNTY agrees that reports, maps, drawings or other work products are for the exclusive use of
26 COUNTY and may be used by COUNTY for the PROJECT.
- 27 5. ENGINEER, and the agents and employees of ENGINEER, in the performance of this agreement, shall
28 act in an independent capacity and not as officers, employees or agents of COUNTY.
29

1 **G. Indemnification and Defense**

- 2 1. The ENGINEER agrees to and shall indemnify and hold harmless the County of Riverside, its Agencies,
3 Districts, Departments and Special Districts, their respective directors, officers, Board of Supervisors,
4 elected and appointed officials, employees, agents and representatives (hereinafter individually and
5 collectively referred to as "Indemnitees") from all liability, including, but not limited to loss, suits, claims,
6 demands, actions, or proceedings caused by any alleged or actual negligence, recklessness, willful
7 misconduct, errors or omissions of ENGINEER, its directors, officers, partners, employees, agents or
8 representatives or any person or organization for whom ENGINEER is responsible, arising out of or from
9 the performance of services under this Agreement. To the extent a loss, suit, claim, demand, action, or
10 proceeding is based on actual or alleged acts or omissions of ENGINEER which are not design
11 professional services, ENGINEER shall indemnify Indemnitees whether or not ENGINEER is negligent.
- 12 2. The duty to indemnify includes loss, suits, claims, demands, actions, or proceedings caused by actual or
13 alleged passive negligence of Indemnitees. The duty to indemnify does not include loss, suits, claims,
14 demands, actions, or proceedings caused by actual active negligence of Indemnitees; however, any
15 actual active negligence of Indemnitees will only affect the duty to indemnify for the specific act found to
16 be active negligence, and will not preclude a duty to indemnify for any other act or omission of
17 Indemnitees.
- 18 3. ENGINEER shall defend and pay, at its sole expense, all costs and fees, including but not limited to
19 attorney fees, cost of investigation, and defense, in any loss, suits, claims, demands, actions, or
20 proceedings based or alleged to be based on any act or omission of ENGINEER arising out of or from the
21 performance of services under this Agreement. The duty to defend applies to any alleged or actual
22 negligence, recklessness, willful misconduct, error or omission of ENGINEER. The duty to defend shall
23 apply whether or not ENGINEER is a party to the lawsuit, and shall apply whether or not ENGINEER is
24 directly liable to the plaintiffs in the lawsuit. The duty to defend applies even if Indemnitees are alleged or
25 found to be actively negligent, unless the act or omission at issue was caused by the sole active
26 negligence of Indemnitees.
- 27 4. The specified insurance provisions and limits required in this Agreement shall in no way limit or
28 circumscribe ENGINEER'S obligations to indemnify and hold harmless Indemnitees from third party
29 claims.

1 5. To the maximum extent allowed by law, the indemnity provisions are intended to be type I indemnity
2 provisions as defined by *MacDonald & Kruse, Inc. v. San Jose Steel Co.* (1972) 29 Cal.App. 3d 413. To
3 the maximum extent allowed by law, the defense provisions are intended to provide for a defense as
4 stated in *Crawford v. Weather Shield Mfg. Co.* (2008) 44 Cal.4th 541. In the event there is conflict
5 between the indemnity and defense provisions and California Civil Code Sections 2782 and 2782.8, the
6 indemnity and defense provisions shall be interpreted to comply with Civil Code sections 2782 and
7 2782.8.

8 **H. Quality Control**

9 ENGINEER shall implement and maintain the following quality control procedures during the preparation
10 of testing in the field and laboratory and documents relating to PROJECT. ENGINEER shall have a
11 quality control plan in effect during the entire time services are being performed under the contract. The
12 plan shall establish a process whereby calculations are independently checked, test methods checked,
13 corrected and back-checked, and all job related correspondence and memoranda routed and received by
14 affected persons and then bound in appropriate job files. Evidence that the quality control plan is
15 functional may be requested by the COUNTY PROJECT MANAGER. All test methods, calculations
16 documents, reports and other items submitted to the COUNTY PROJECT MANAGER for review shall be
17 marked clearly as being fully checked and that the preparation of the material followed the quality control
18 plan established for the work.

19 **I. Extra Work**

- 20 1. ENGINEER shall not perform Extra Work until receiving written authorization from the COUNTY
21 PROJECT MANAGER.
- 22 2. In the event that COUNTY directs ENGINEER to provide services constituting Extra Work, COUNTY shall
23 provide extra compensation to the ENGINEER. Allowable compensation for approved extra work will be
24 mutually agreed upon.
- 25 3. A Supplemental Agreement providing for such compensation for Extra Work shall be issued by COUNTY
26 to ENGINEER. Such Supplemental Agreement shall be executed by ENGINEER and be approved by
27 COUNTY.

28 **J. Disputes**

- 29 1. In the event ENGINEER considers any work demanded of him to be outside the requirements of the

1 contract, or if he considers any order, instruction, or decision of COUNTY to be unfair, he shall promptly
2 upon receipt of such order, instruction or decision, ask for a written confirmation of the same whereupon
3 he shall proceed without delay to perform the work or to conform to the order, instruction, or decision; but
4 unless ENGINEER finds such order, instruction, or decision satisfactory, he shall within 20 days after
5 receipt of same, file a written protest with COUNTY stating clearly and in detail his objections and reasons
6 therefore. Except for such protests or objections as are made of record in the manner specified and
7 within the time stated herein, and except for such instances where the basis of a protest could not
8 reasonably have been foreseen by ENGINEER within the time limit specified for protest, ENGINEER
9 hereby waives all grounds for protests or objections to the orders, instruction, or decisions of COUNTY
10 and hereby agrees that, as to all matters not included in such protests, the orders, instructions and
11 decisions of COUNTY will be limited to matters properly falling within COUNTY's authority.

- 12 2. Any controversy or claim arising out of or relating to this contract which cannot be resolved by mutual
13 agreement may be settled by arbitration in accordance with the rules of the American Arbitration
14 Association, provided that the parties mutually agree to submit to arbitration.
- 15 3. Neither the pendency of a dispute nor its consideration by arbitration will excuse ENGINEER from full and
16 timely performance in accordance with the terms of the contract.

17 **K. Termination Without Cause**

- 18 1. COUNTY reserves the right to terminate this contract at COUNTY's discretion and without cause, upon
19 thirty (30) calendar days written notice to ENGINEER.
- 20 2. In the event of termination of the Agreement, upon demand, ENGINEER shall deliver to COUNTY all
21 testing data, reports, and all other materials and documents prepared or provided to ENGINEER in the
22 performance of this Agreement. All such documents and materials shall be property of COUNTY.
- 23 3. In the event that the contract is terminated, ENGINEER is entitled to full payment for all services
24 performed up to the time written notice of contract cancellation is received by ENGINEER. Payment shall
25 be made for services performed to date based upon the percentage ratio that the basic services
26 performed bear to the services contracted for, less payments made to date; plus any amount for
27 authorized, but unpaid, extra work performed and costs incurred.

28 **L. Termination for Lack of Performance**

29 COUNTY may terminate this agreement and be relieved of the payment of any consideration to ENGINEER

1 should ENGINEER fail to perform the covenants herein contained at the time and in the manner herein
2 provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed
3 proper by COUNTY. In such event, ENGINEER shall be paid only for work completed and delivered to
4 COUNTY in a timely and successful manner.

5 **M. Insurance**

6 Without limiting or diminishing the ENGINEER'S obligation to indemnify or hold the COUNTY harmless,
7 ENGINEER shall procure and maintain or cause to be maintained, at its sole cost and expense, the following
8 insurance coverages during the term of this Agreement, or for a term otherwise specified herein.

9 1. Workers' Compensation:

10 Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California.
11 Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less
12 than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of the
13 County of Riverside; and to provide a Borrowed Servant/Alternate Employer Endorsement.

14 2. Commercial General Liability:

15 Commercial General Liability insurance coverage, including but not limited to, premises liability,
16 contractual liability, completed operations, personal and advertising injury covering claims which may
17 arise from or out of ENGINEER'S performance of its obligations hereunder. Policy shall name, by
18 endorsement all Agencies, Special Districts and Departments of the County of Riverside, their respective
19 Directors, Officers, Board of Supervisors, employees, agents, elected and appointed officials and
20 subcontractors as Additional Insureds. Policy's limit of liability shall not be less than \$1,000,000 per
21 occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply
22 separately to this agreement or be no less than two (2) times the occurrence limit.

23 3. Vehicle Liability:

24 ENGINEER shall maintain Liability Insurance for all owned, non-owned or hired vehicles in an amount not
25 less than \$1,000,000 per occurrence combined single limit. If ENGINEER'S vehicles or mobile
26 equipment are not to be used in the performance of the obligations under this Agreement, ENGINEER
27 shall maintain coverage for non-owned or hired vehicles in an amount not less than \$1,000,000 per
28 occurrence combined single limit. Such non-owned or hired vehicle coverage may be included as a part
29 of the Commercial General Liability policy. If such insurance contains a general aggregate limit, it shall

1 apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall
2 name by endorsement, all Agencies, Special Districts and Departments of the County of Riverside, their
3 respective Directors, Officers, Board of Supervisors, employees, agents, elected or appointed officials
4 and subcontractors as Additional Insureds.

5 4. Professional Liability:

6 ENGINEER shall maintain Professional Liability Insurance providing coverage for performance of work
7 included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and
8 \$2,000,000 annual aggregate. If ENGINEER'S Professional Liability Insurance is written on a claims-
9 made basis rather than an occurrence basis, such insurance shall continue through the term of this
10 Agreement. Upon termination of this Agreement or the expiration or cancellation of the claims made
11 insurance policy ENGINEER shall purchase at his sole expense either 1) an Extended Reporting
12 Endorsement (also known as Tail Coverage); or, 2) Prior Dates Coverage from a new insurer with a
13 retroactive date back to the date of, or prior to, the inception of this Agreement; or, 3) demonstrate
14 through Certificates of Insurance that ENGINEER has maintained continuous coverage with the same or
15 original insurer. Coverage provided under items; 1), 2) or 3) will continue for a period of five (5) years
16 beyond the termination of this Agreement.

17 5. General Insurance Provisions - All lines:

- 18 a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of
19 California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements
20 are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a
21 requirement for a particular insurer such waiver is only valid for that specific insurer and only for one
22 policy term.
- 23 b. The ENGINEER'S insurance carrier(s) must declare its insurance deductibles or self-insured
24 retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such
25 deductibles and/or retentions shall have the prior written consent of the County Risk Manager before
26 the commencement of operations under this Agreement. Upon notification of deductibles or self
27 insured retentions which are deemed unacceptable to the COUNTY, at the election of the County's
28 Risk Manager, ENGINEER'S carriers shall either; 1) reduce or eliminate such deductibles or self-
29 insured retentions as respects this Agreement with the COUNTY, or 2) procure a bond which

1 guarantees payment of losses and related investigations, claims administration, defense costs and
2 expenses.

3 c. The ENGINEER shall cause their insurance carrier(s) to furnish the COUNTY with 1) a properly
4 executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting
5 coverage as required herein; or, 2) if requested to do so orally or in writing by the County Risk
6 Manager, provide original Certified copies of policies including all Endorsements and all attachments
7 thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of
8 insurance shall contain the covenant of the insurance carrier(s) shall provide no less than thirty (30)
9 days written notice be given to the COUNTY prior to any material modification or cancellation of such
10 insurance. In the event of a material modification or cancellation of coverage, this Agreement shall
11 terminate forthwith, unless the COUNTY receives, prior to such effective date, another properly
12 executed original Certificate of Insurance and original copies of endorsements or certified original
13 policies, including all endorsements and attachments thereto evidencing coverages and the insurance
14 required herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on
15 its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.
16 *ENGINEER shall not commence operations until the COUNTY has been furnished original*
17 *Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance*
18 *including all endorsements and any and all other attachments as required in this Section.*

19 d. It is understood and agreed by the parties hereto and the ENGINEER'S insurance company(s), that
20 the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary
21 insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retentions or self-
22 insured programs shall not be construed as contributory.

23 e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope
24 of services or performance of work the Risk Manager of the County of Riverside reserves the right to
25 adjust the types of insurance required under this Agreement and the monetary limits of liability for the
26 insurance coverages required herein, if; in the County Risk Manager's reasonable judgment, the
27 amount or type of insurance carried by the ENGINEER has become inadequate.

28 f. ENGINEER shall pass down the insurance obligations contained herein to all tiers of subcontractors
29 working under this Agreement

1 **N. Conflict of Interest**

2 ENGINEER warrants, by execution of this contract, that no person or selling agency has been employed
3 or retained to solicit or secure this contract upon an agreement or understanding for a commission,
4 percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established
5 commercial or selling agencies maintained by ENGINEER for the purpose of securing business. For
6 breach or violation of this warranty, COUNTY has the right to annul this contract without liability, pay only
7 for the value of the work actually performed, or in its discretion to deduct from the contract price or
8 consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or
9 contingent fee. ENGINEER may be requested to complete a Conflict of Interest Statement prior to,
10 during, or after execution of this contract. ENGINEER understands that as a condition of this contract
11 ENGINEER agrees to complete the Conflict of Interest Statement when requested to do so by COUNTY.

12 **O. Legal Compliance**

13 ENGINEER shall comply with all Federal, State and local laws, statutes, ordinances, rules and
14 regulations, and the orders and decrees of any courts or administrative bodies or tribunals currently in
15 effect and in any manner affecting the performance of this Agreement, including, without limitation,
16 workers' compensation laws and licensing and regulations.

17 **P. Nondiscrimination**

- 18 1. During the performance of this agreement, ENGINEER and its Subcontractors shall not unlawfully
19 discriminate against any employee or applicant for employment because of race, religion, color, national
20 origin, ancestry, physical handicap, medical condition, marital status, age or sex. ENGINEER and
21 Subcontractor shall comply with the provisions of the Fair Employment and Housing Act (Government
22 Code, Section 12900 et seq.) and applicable regulations promulgated thereunder (California
23 Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment
24 and Housing Commission implementing Government Code, Section 12900, set forth in Chapter 5 of
25 Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference
26 and made a part hereof as if set forth in full. ENGINEER and its Subcontractors shall give written notice
27 of their obligations under this clause to labor organizations with which they have a collective bargaining or
28 other agreement.
- 29 2. ENGINEER will provide all information and reports required by the Regulations, or orders and instructions

1 issued pursuant thereto, and will permit access to its books, records, accounts, other sources of
2 information, and its facilities as may be determined by COUNTY or AGENCIES to be pertinent to
3 ascertain compliance with such Regulations, orders and instructions. Where any information required of
4 ENGINEER is in the exclusive possession of another who fails or refuses to furnish this information,
5 ENGINEER shall so certify to COUNTY, or the Federal Highway Administration as appropriate and shall
6 set forth what efforts he has made to obtain the information.

7 3. In the event of ENGINEER's noncompliance with the nondiscrimination provisions of this contract,
8 COUNTY shall impose such contract sanctions as it determines to be appropriate, including, but not
9 limited to:

- 10 • Withholding of payments to ENGINEER under the contract until ENGINEER complies;
- 11 • Cancellation, termination, or suspension of the contract in whole or in part.

12 4. ENGINEER shall include the nondiscrimination and compliance provisions of this clause in all
13 subcontracts to perform work under this contract.

14 5. ENGINEER shall comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR
15 21 through Appendix H and 23 CFR 710.405(b) are applicable to this contract by reference.

16 **Q. Labor Code and Prevailing Wages**

- 17 1. Certain Classifications of Labor under this contract may be subject to prevailing wage requirements.
- 18 2. Reference is made to Chapter 1, Part 7, Division 2 of the California Labor Code (commencing with
19 Section 1720). By this reference said Chapter 1 is incorporated herein with like effect as if it were here
20 set forth in full. The parties recognize that said Chapter 1 deals, among other things with discrimination,
21 penalties and forfeitures, their disposition and enforcement, wages, working hours, and securing worker's
22 compensation insurance and directly effect the method of prosecution of the work by ENGINEER and
23 subject it under certain conditions to penalties and forfeitures. Execution of the Agreement by the parties
24 constitutes their agreement to abide by said Chapter 1, their stipulation as to all matters which they are
25 required to stipulate as to by the provisions of said Chapter 1, constitutes ENGINEER's certification that
26 he is aware of the provisions of said Chapter 1 and will comply with them and further constitutes
27 ENGINEER's certification as follows: "I am aware of the provisions of Section 3700 of the California Labor
28 Code which require every employer to be insured against liability for worker's compensation or to
29 undertake self-insurance in accordance with the provisions of that Code, and I will comply with such

1 provisions before commencing the performance of the work of this contract."

- 2 3. Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates, including the per diem
3 wages applicable to the work, and for holiday and overtime work, including employer payments for health
4 and welfare, pension, vacation, and similar purposes, in the county in which the work is to be done have
5 been determined by the Director of the California Department of Industrial Relations. These wages are
6 available from the California Department of Industrial Relations' Internet website at <http://www.dir.ca.gov>.
- 7 4. Should a portion of the project contain Federal funding, Federal minimum wages shall be used. The
8 Federal minimum wage rates for this project as determined by the United States Secretary of Labor are
9 available from the U.S Department of Labor, Employment Standards Administration, Wage and Hour
10 Division's Internet website at <http://www.access.gpo.gov/davisbacon>. If there is a difference between the
11 minimum wage rates determined by the Secretary of Labor and the general prevailing wage rates
12 determined by the Director of the California Department of Industrial Relations for similar classifications of
13 labor, the ENGINEER and subcontractors shall pay not less than the higher wage rate. The Department
14 will not accept lower State wage rates determinations. This includes "helper" (or other classifications
15 based on hours of experience) or any other classification not appearing in the Federal wage
16 determinations. Where Federal wage determinations do not contain the State wage rate determination
17 otherwise available for use by the ENGINEER and subcontractors, the ENGINEER and subcontractors
18 shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the
19 employees in question.

20 **R. Review and Inspection**

21 ENGINEER and any Subcontractors shall permit COUNTY and/or AGENCIES to review and inspect
22 PROJECT activities including review and inspection on a daily basis.

23 **S. Record Retention / Audits**

24 1. ENGINEER, Subcontractors, and COUNTY shall maintain all books, documents, papers, accounting
25 records, and other evidence pertaining to the performance of the contract, but not limited to, the costs of
26 administering the contract. All parties shall make such materials available at their respective offices at all
27 reasonable times during the contract period and for five years from the date of final payment under the
28 contract.

29 2. COUNTY, Caltrans, the State Auditor General, FHWA or any duly authorized representative of the

1 Federal Government shall have access to any books, records, and documents of ENGINEER that are
2 pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be
3 furnished if requested. (Government Code Section 105320)

4 **T. Ownership of Data**

5 Ownership and title to all reports, documents and test results produced as part of this contract will
6 automatically be vested in COUNTY and no further agreement will be necessary to transfer ownership to
7 COUNTY.

8 **U. Confidentiality of Data**

- 9 1. All financial, statistical, personal, technical or other data and information which is designated confidential
10 by COUNTY, and made available to ENGINEER in order to carry out this contract, shall be protected by
11 ENGINEER from unauthorized use and disclosure.
- 12 2. Permission to disclose information on one occasion for a public hearing held by COUNTY relating to the
13 contract shall not authorize ENGINEER to further disclose such information or disseminate the same on
14 any other occasion.
- 15 3. ENGINEER shall not comment publicly to the press or any other media regarding the contract, COUNTY
16 actions on the same, except to COUNTY staff, ENGINEER's own personnel involved in the performance
17 of this contract, or at public hearings, or in response to questions from a Legislative committee.
- 18 4. Each subcontract shall contain provisions similar to the foregoing related to the confidentiality of data and
19 nondisclosure of the same.
- 20 5. ENGINEER shall not issue any news release or public relations item of any nature whatsoever regarding
21 work performed or to be performed under this contract without prior review of the contents thereof by
22 COUNTY and receipt of COUNTY's written permission.

23 **V. Funding Requirements**

- 24 1. It is mutually understood between the parties that this contract may have been written before ascertaining
25 the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties
26 in order to avoid program and fiscal delays that would occur if the agreement were executed after that
27 determination was made.
- 28 2. This agreement is valid and enforceable only if sufficient funds are made available to COUNTY for the
29 purpose of this PROJECT. In addition, this agreement is subjected to any additional restrictions,

1 limitations, conditions or any statute enacted by Congress, State Legislature or COUNTY that may affect
2 the provisions, terms or funding of this contract in any manner.

- 3 3. It is mutually agreed that if sufficient funds for the program are not appropriated, this contract will be
4 amended to reflect any reduction in funds.

5 **ARTICLE V • PERFORMANCE**

6 **A. Performance Period**

- 7 1. This Contract shall be effective December 15, 2010 through June 30, 2013, and ENGINEER shall begin
8 service upon notification to proceed by the COUNTY PROJECT MANAGER.
- 9 2. ENGINEER is advised that any recommendation for contract award is not binding on COUNTY until the
10 proposed contract is fully executed and approved by COUNTY.
- 11 3. ENGINEER shall perform PROJECT services in accordance with the provisions set forth in Appendix A,
12 Scope of Services, which is attached hereto and incorporated herein by reference.
- 13 4. The COUNTY PROJECT MANAGER shall provide written notification at the beginning of any request for
14 PROJECT services. The COUNTY PROJECT MANAGER shall also provide written notification at the
15 termination of any PROJECT services.

16 **B. Time Extensions**

- 17 1. This contract may be extended in one year increments for a total not to exceed two years from the
18 original expiration date of the contract. Terms and considerations may be renegotiated in a supplemental
19 agreement.

20 **C. Reporting Progress**

- 21 1. As part of the monthly invoice ENGINEER shall submit a progress report in accordance with COUNTY
22 Engineering Services Progress Reporting Guidelines. Progress Reports shall indicate the progress
23 achieved during the previous month in relation to the Schedule of Services, Appendix B, which is
24 attached hereto and incorporated herein by reference. Submission of such progress report by
25 ENGINEER shall be a condition precedent to receipt of payment from COUNTY for each monthly invoice
26 submitted.
- 27 2. To ensure understanding and performance of the contract objectives, meetings between COUNTY,
28 AGENCIES, and ENGINEER shall be held as often as deemed necessary. All work objectives,
29 ENGINEER's work schedule, the terms of the contract and any other related issues will be discussed

1 and/or resolved. ENGINEER shall keep minutes of meetings and distribute copies of minutes as
2 appropriate.

3 **D. Evaluation of ENGINEER**

4 ENGINEER's performance will be evaluated by COUNTY for future reference.

5 **ARTICLE VI • COMPENSATION**

6 **A. Work Authorization**

7 ENGINEER shall not commence performance of any work or PROJECT services until so directed by the
8 County Project Manager. No payment will be made for any work performed prior to approval of this
9 contract.

10 **B. Basis of Compensation**

- 11 1. PROJECT services as provided under this agreement as described in the Scope of Services, shall be
12 compensated for as defined in Appendix A, B and Appendix C, which is attached hereto and incorporated
13 herein by reference and in accordance with COUNTY Engineering Invoicing Procedures.
- 14 2. Budget is attached hereto and incorporated herein by reference. The total amount of the Contract is not
15 to exceed \$360,000.00.
- 16 3. No additional compensation for Extra Work will be paid except upon the issuance of an Extra Work Order
17 by COUNTY.
- 18 4. ENGINEER shall submit itemized costs in a spreadsheet on a monthly basis and shall include daily costs
19 for each individual project assigned. The following information shall be included on the spreadsheet:
20 project work order number, IP number, employee name, date worked, hours worked, mileage driven, rate
21 of services, total monthly project costs and a year to date total cost amount.
- 22 5. Payments will be based on PROJECT Services provided and actual costs incurred.
- 23 6. The COUNTY PROJECT MANAGER will make payments as promptly as fiscal procedures permit upon
24 receipt of itemized invoices.
- 25 7. The consideration to be paid ENGINEER, as provided herein, shall be in compensation for all of
26 ENGINEER's expenses incurred in the performance hereof, including travel and per diem, unless
27 otherwise expressly so provided.
- 28 8. ENGINEER agrees that the Contract Cost Principles and Procedures, CFR 48, Federal Acquisition
29 Regulations Systems, Chapter 1, Part 31, shall be used to determine the allow ability of individual items

1 of cost.

2 9. ENGINEER also agrees to comply with Federal procedures in accordance with Office of Management
3 and Budget Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local
4 Governments.

5 10. In the event of errors or omissions in test results for PROJECT, ENGINEER shall perform the necessary
6 Highway Materials Testing engineering services required to correct such errors and omissions without
7 additional charge to COUNTY.

8 **C. Progress Payments**

9 1. ENGINEER shall submit monthly invoices for PROJECT Services in accordance with Appendix B,
10 Schedule of Services, and in accordance with COUNTY Engineering Services Invoicing Procedures.

11 2. ENGINEER shall submit an invoice each month for PROJECT services performed during the preceding
12 month. Invoices shall be submitted to the COUNTY PROJECT MANAGER and shall be included with a
13 Progress Report covering the same period as the submitted invoice. Invoices shall show separate line
14 item totals for each work order or extra work task.

15 3. Progress payments will be based on PROJECT services provided and actual costs incurred. Payments
16 made prior to the completion of each phase will not exceed the amount allowed in ENGINEER's cost
17 proposal for the completion of that phase and prior phases, unless a prior written agreement has been
18 obtained.

19 4. Progress payments will be made as promptly as fiscal procedures will permit upon receipt by the
20 COUNTY PROJECT MANAGER of itemized invoices.

21 5. Payment of the post construction Services will be withheld until all documentation is submitted in an
22 acceptable format and COUNTY issues a Notice of Final Acceptance for PROJECT. The budgeted
23 amount will be paid to ENGINEER after COUNTY has approved ENGINEER's final documents and
24 estimate for PROJECT.

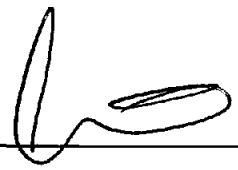


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ARTICLE VIII • APPROVALS

COUNTY Approvals

RECOMMENDED FOR APPROVAL:

 Dated: 12/13/10

JUAN C. PEREZ

Director of Transportation

APPROVED AS TO FORM:

PAMELA J. WALLS, COUNTY COUNSEL

 Dated: 12/22/10

By Deputy

APPROVAL BY THE BOARD OF SUPERVISORS

_____ Dated: _____

PRINTED NAME

Chairman, Riverside County Board of Supervisors

ATTEST:

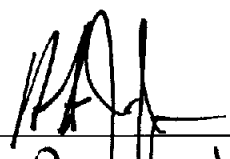
_____ Dated: _____

KECIA HARPER-IHEM

Clerk of the Board

ENGINEER Approvals

ENGINEER:

 Dated: 11/23/10

Robert Johnson
PRINTED NAME

President
TITLE

ENGINEER:

NA Dated: _____

PRINTED NAME

TITLE

APPENDIX A • SCOPE OF SERVICES

1. **Project Description:**

The **PROJECT** shall consist of providing the following materials testing and engineering services: (1) conducting laboratory analysis tests of untreated bases and basement soils; (2) conducting relative compaction tests of treated and untreated bases and basement soils by using nuclear gauge; (3) performing geological studies and geotechnical engineering including cut slope mapping, seismic refraction survey, soil and groundwater conditions, rock rippability, slope stability for cuts and fills, foundation investigation, corrosion testing, retaining walls, pavement design, and geotechnical and foundation design reports; and (4) conducting asphalt testing for asphalt concrete, asphalt cement, and liquid asphalt.

2. **Location:**

The **PROJECT** services shall be provided at various locations within Riverside County. Testing technicians shall report to the **COUNTY PROJECT MANAGER:**

**Gary Morton, Technical Engineering Unit Supervisor
Engineering Building-Materials Laboratory
2950 Washington Street, Riverside, CA. 92504**

3. **Coordination:**

The **ENGINEER** shall coordinate with the **COUNTY PROJECT MANAGER** and other County personnel as required. Testing technicians shall report to the **COUNTY PROJECT MANAGER** at the beginning and end of a ten (10) hour shift. If the **COUNTY'S** shift schedule should change during the time of the approved contract, the **ENGINEERS'S** testing technicians will also change to accommodate the new schedule. The shift is currently as follows:

6:30 a.m. to 4:30 p.m., Monday thru Thursday

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4. **ENGINEER Duties:**

A. Conducting Soil Analysis Tests:

Samples of soil materials will be picked up by the testing technicians at the materials laboratory and taken to the **ENGINEER'S** laboratory for sieve analysis, sand equivalent, and resistance" value testing on each sample using Caltrans standard test methods 202, 217, and 301 respectively. The results of the tests will be reported to the **COUNTY PROJECT MANAGER** on approved written format within ten (10) working days from the date that the samples were picked up.

B. Conducting Relative Compaction Tests:

The in-place density testing of aggregate bases and basement soils will be performed by the testing technicians on subdivision tracts and roadway projects within the County of Riverside. The **ENGINEER** shall provide a technician upon an advanced 36 hours notice from the **COUNTY PROJECT MANAGER**. The technician shall have a minimum of six (6) months of experience in soils testing and certified in the use of a nuclear gauge. The gauge shall have a current calibration certification and leak test from an approved issuing authority. The **ENGINEER** shall also provide a vehicle and other miscellaneous tools needed for compaction testing. The testing technician shall be assigned five (5) project testing assignments daily, commencing at 7:00 am and concluding at no later than 3:30pm. The assignments may or may not be the same projects as the previous day. The tests shall be performed using Caltrans standard test method 231, County modified. The maximum density and moisture content of the soil and aggregate base material will be the responsibility of the County unless the **COUNTY PROJECT MANAGER** directs the **ENGINEER** to perform these tests in accordance with Caltrans test method 216. The relative compaction results of tests taken shall be submitted to the County at the end of each working day on County forms.

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C. Performing Geological Studies and Providing Geotechnical Engineering:

The **ENGINEER** will perform investigation and conduct exploration on assigned project(s). A written request will be sent to the **ENGINEER** along with a copy of the plans and specification of the project. This request will detail the scope of work and all requirements including right of entry and other permits required to perform the work/investigation for the project. Site investigations shall include, at a minimum, (1) site reconnaissance and mapping for stability of existing slope, soil survey mapping, topography and drainage patterns, and geologic and seismic settings; (2) drilling and sampling for shallow and deep foundations, retaining walls, soil and water corrosivity, and other related structure foundation and subsurface exploration; (3) seismic refraction survey for rock rippability analysis and correlation to exploratory boring data; (4) laboratory testing to include direct shear, consolidation, corrosivity, resistance "R" value, etc.; (5) structural pavement design based on Caltrans procedures; (6) analyses and evaluations for site seismicity, corrosion issues, slope stability, settlement, liquefaction, rock rippability, culvert foundation, etc.; (7) Life Cycle Cost Analysis; and (8) Geotechnical Design and/or Materials Report to include all geologic and geotechnical testing, analysis, and design, prepared in accordance with Caltrans guidelines. Because of the varying size and degree of complexity of the project, the requested services will be site specific and the reporting and final documentation for the work will be specified in the original written request. All reports will be sent to the **COUNTY PROJECT MANAGER** at the time specified in the written request for the work.

D. Conducting Asphalt Testing:

Samples of the asphalt concrete material will be picked up by the testing technicians at the materials laboratory and will be taken to the **ENGINEER'S** laboratory, or if approved by the **COUNTY PROJECT MANAGER**, the **ENGINEER'S** technician may be required to core the asphalt material after placement of the asphalt paving for verification of the asphalt mix used at the project. Laboratory testing on bituminous materials shall include, but not limited to: Caltrans test method 304, "Preparation of Bituminous Materials"; Caltrans test method 308, Specific Gravity of Compressed

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AC mixtures"; Caltrans test method 366, "Stabilometer Value"; Caltrans test method 367, "Optimum Bitumen Content"; Caltrans test method 382, "Asphalt Content-Ignition Oven"; Chemical testing of treated and untreated soils and aggregate bases, ASTM test method D 2170, "Kinematic Viscosity", ASTM test method D2171, "Absolute Viscosity"; ASTM D5, "Penetration"; ASTM test method D6934, "Residue by Evaporation"; ASTM test method D2042, "Solubility"; ASTM D6933, "Sieve Test"; and ASTM test method D3910, "Wet Track Abrasion Test (WTAT)". Field sampling of aggregate slurry may be required by the COUNTY for fabricating WTAT specimens. The results of the tests will be reported to the **COUNTY PROJECT MANAGER** on approved written format within ten (10) working days from the date that the samples were picked up.

E. Safety:

The **ENGINEER** shall comply with OSHA regulations regarding safety equipment and procedures, and safety instructions issued by the State. **ENGINEER** shall provide hard hats and orange safety vests for all **ENGINEER** personnel, which will be worn at all times while on the job site.


F. Daily report requirements:

The testing technician performing compaction tests shall receive a project file for his/her assignments. The testing results shall be recorded on a form supplied by the County and all pertinent data requested on the form shall be reported as directed by the **COUNTY PROJECT MANAGER** and placed in the file. Information data requested on the form includes: Tract number or project number, date, time arrived, time departed, type of testing, County Inspector and other comments. At the end of shift, the file and duplicate copies of the form, and copies of time and mileage for that day are given to the **COUNTY PROJECT MANAGER**. A copy of sample compaction form is attached. The reporting of test results for asphalt testing and the

geological/geotechnical studies will be based on the scope of services that is agreed upon unless otherwise specified herein.

G. Invoicing and Payment:

The **ENGINEER** shall submit invoices to the **COUNTY PROJECT MANAGER** in accordance with time and mileage per tract or project number. A spread sheet showing task codes, Tract number's, I.P numbers, project numbers, cost per unit and actual hours and mileage shall summarize the invoices. Attached is a sample of spreadsheet. For geotechnical related work, the invoice shall show a breakdown of the work completed listing the man-hours used for engineers, geologists, and clerical staff. The total cost for geotechnical services will be based on the scope of services provided by the **COUNTY** to the **ENGINEER**.

Changes ok

12-22-2010

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**APPENDIX B
SCHEDULE OF SERVICES**

ARTICLE B1: INTRODUCTION

Satisfactory performance and completion of the services requested under this Agreement shall be compensated based upon the fee outlined below. County will compensate **ENGINEER** for hours worked by **ENGINEER'S** staff in performance of the work in accordance with Appendix C, FEE SCHEDULE. Hours worked and mileage driven if not included in hourly rate shall be included in the monthly invoices. Actual costs under the contract shall not exceed the yearly budgeted amount without prior written agreement between the **COUNTY** and **ENGINEER**.

ARTICLE B2: LABOR AND EQUIPMENT RATES 2010-2013

Labor and equipment rates used shall be the rates as shown in Appendix C, FEE SCHEDULE, attached hereto and incorporated herein by reference.

The rates shown herein are in effect for the effective date of this Agreement. Thereafter, there will be **NO** adjustments through the entire time of the three year contract providing services listed.

OVERTIME, hours in excess of ten (10) hours in daily shift, shall be billed at a labor rate not exceeding **1.50** times the listed regular hourly rate. Travel time to and from the County yards is not included as part of the working hours.

ARTICLE B3. INVOICING AND PAYMENT

ENGINEER shall submit invoices to the **COUNTY PROJECT MANAGER** in accordance with the Highway testing Services Agreement, ARTICLE VI COMPENSATION, and with the following requirements:

1. Charges shall be billed in accordance with the terms and rates included herein, unless otherwise agreed in writing by the **COUNTY PROJECT MANAGER**.
2. The charges for each individual assignment under this Agreement shall be listed separately and in a spreadsheet format.

Payments shall be made in accordance with the Highway Testing Services Agreement, Article VI, COMPENSATION.



APPENDIX B FEE SCHEDULE

ARTICLE B1: INTRODUCTION

Satisfactory performance and completion of the services requested under this Agreement shall be compensated based upon the fee outlined below. County will compensate ENGINEER for hours worked by ENGINEER'S staff in performance of the work in accordance with the FEE SCHEDULE. Hours worked and mileage driven if not included in hourly rate shall be included in the monthly invoices. Actual costs under the contract shall not exceed the yearly budgeted amount without prior written agreement between the COUNTY and ENGINEER.

ARTICLE B2: LABOR AND EQUIPMENT RATES 2010-2012

TABLE OF TESTING SERVICES COST RATES (DOLLARS)

A = Non-Prevailing Wage Rates

B = Prevailing Wage Rates

Testing Services	2010	2010	2011	2011	2012	2012
CTM 231 *	\$70.00	\$85.00	\$70.00	\$87.50	\$70.00	\$90.00
Vehicle Mileage	8.00	8.00	8.00	8.00	8.00	8.00
CTM 202	140.00	140.00	140.00	140.00	140.00	140.00
CTM 216	150.00	150.00	150.00	150.00	150.00	150.00
CTM 217	70.00	70.00	70.00	70.00	70.00	70.00
CTM 301	250.00	250.00	250.00	250.00	250.00	250.00
CTM304/366	250.00	250.00	250.00	250.00	250.00	250.00
CTM305	165.00	165.00	165.00	165.00	165.00	165.00
CTM382	180.00	180.00	180.00	180.00	180.00	180.00
CTM523	N/A	N/A	N/A	N/A	N/A	N/A
ASTM D 2170	N/A	N/A	N/A	N/A	N/A	N/A
ASTM D 2171	N/A	N/A	N/A	N/A	N/A	N/A
ASTM D 5	N/A	N/A	N/A	N/A	N/A	N/A
ASTM C39	22.00	22.00	22.00	22.00	22.00	22.00

The rates shown herein are in effect for the effective date of this Agreement. Thereafter, there will be NO adjustments through the entire time of the three year contract providing services listed.

*Nuclear density testing will be provided on an hourly basis. New Prevailing Wage Determinations are posted annually by the State Department of Industrial Relations. Prevailing wage rates shown are based on assumptions that annual prevailing wage increases in 2010, 2011, and 2012 will not exceed 3 percent.