

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works AKM

BOARD AGENDA # \*C-4

Urgent  Routine

AGENDA DATE October 21, 2008

CEO Concur with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of Agreements with Neil O. Anderson & Associates and Wallace-Kuhl & Associates to Provide Material Testing Services for Various Public Works Department Projects through November 2010

STAFF RECOMMENDATIONS:

1. Approve agreements with Neil O. Anderson & Associates and Wallace-Kuhl & Associates to provide material testing services for various Public Works Department projects through November 2010 at an amount not to exceed \$125,000 annually for each individual agreement.
2. Authorize the Public Works Director to sign the agreements.
3. Authorize the Public Works Director to sign future amendments during the life of the agreements and within the approved compensation limits.

(Continued on Page 2)

FISCAL IMPACT:

The fiscal amounts assigned to these agreements with Neil O. Anderson & Associates and Wallace-Kuhl & Associates for material testing services will depend upon the individual project and its specific requirements. The upcoming Public Works Department construction schedule for the next two years yields an estimated materials testing cost of approximately \$500,000. Each separate project will individually fund their share of testing. Funds for testing services will be authorized and transferred at the project's Board approval or award phase of the construction contract.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2008-726

On motion of Supervisor Grover, Seconded by Supervisor Monteith  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, and Vice-Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: Mayfield

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST: Elizabeth A. King  
ELIZABETH A. KING, Assistant Clerk

File No.

Approval of Agreements with Neil O. Anderson & Associates and Wallace-Kuhl & Associates to Provide Material Testing Services for Various Public Works Department Projects through November 2010

STAFF RECOMMENDATIONS (Continued):

4. Authorize the Public Works Director to extend the term of the agreements, upon mutual agreement, for up to an additional two years at an amount not to exceed \$125,000 annually.

FISCAL IMPACT (Continued):

These funds shall not exceed the maximum \$250,000 budgeted for each individual agreement over the twenty-four month period or through November 2010.

DISCUSSION:

Material testing on roadwork construction is an integral portion of the project. It ensures the contractor is providing construction results and product at the standard required by the approved plans and specifications.

The use of two different firms for testing services for all County projects, instead of individual firms for each project, ensures a consistent line of communication between the County construction managers and the testing firms. This communication creates an integrated team focused on project quality and limits the cost per test to an agreed upon amount for the term of the agreement. Additionally, this dual approach ensures timely responses for field visits, sampling, and testing if one firm were to be backed up with other non-County projects.

In anticipation of the upcoming construction in Fiscal Year 2008-2009, the Public Works Department in early June 2008 issued a Request for Proposal (RFP) for material testing services to several material testing firms in the area. The submittals were due at the end of June 2008. Seven proposals were received, evaluated and scored by the Department of Public Works. From those evaluations, four firms were selected to be interviewed by the Department. Neil O. Anderson & Associates and Wallace-Kuhl & Associates were the testing firms considered most qualified as a result of the evaluation process. Both firms proposed testing costs that are competitive and in line with industry standards for said services.

The cost of material testing varies based upon the project type, size, location and testing required. The Public Works Department follows the requirements for testing based upon the California Department of Transportation (Caltrans) guidelines to determine the amount and type necessary for a specific project.

Approval of Agreements with Neil O. Anderson & Associates and Wallace-Kuhl & Associates to Provide Material Testing Services for Various Public Works Department Projects through November 2010

POLICY ISSUES:

The Board should consider if the recommended actions are consistent with its priorities of providing a safe community, a healthy community and a well-planned infrastructure system.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CB:la

L:\MATERIAL TESTING 2008\BOARD ITEMS\AWARD\MATERIAL\TESTING\CONTRACTS-102108

**STANISLAUS COUNTY PUBLIC WORKS  
ENGINEERING DIVISION  
1716 MORGAN ROAD  
MODESTO, CA 95358**

**TRANSMITTAL**

**Date:** October 29, 2008  
**To:** Suzi Seibert, Assistant Clerk of the Board  
**Re:** Attachment for October 21, 2008 - Item \*C-4  
Agreement – Neil O. Anderson & Associates  
**From:** Linda Allsop, Morgan Road  
209-525-4157

BOARD OF SUPERVISORS  
OCT 29 10 08 AM '08

Hi Suzi:

Enclosed for your file is one of the attachments for Item \*C-4, October 21, 2008.  
Agreement with Neil O. Anderson.

**Approval of Agreements with Neil O. Anderson & Associates and Wallace-  
Kuhl & Associates to Provide Material Testing Services for Various Public  
Works Department Projects through November 2010**

Have a good day!

**STANISLAUS COUNTY  
PROFESSIONAL DESIGN SERVICES AGREEMENT**

This Agreement is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and Neil O. Anderson & Associates, Inc. hereinafter referred to as "Consultant".

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0 PROFESSIONAL SERVICES TO BE PROVIDED BY CONSULTANT**

1.1. Scope of Services: Consultant shall provide the professional services described in the County's Request for Proposal ("RFP") attached hereto as Exhibit "A" and incorporated herein by reference and Consultant's Response to County's RFP (the "Response"). A copy of said Response is attached hereto as Exhibit "B" and incorporated herein by this reference.

1.2. Professional Practices: All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise County of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Representations: Consultant represents that it has reviewed the RFP and that in its professional judgment the services to be performed under this Agreement can be performed within the maximum fee set forth herein below and within the time specified in the Project Schedule attached hereto. Consultant represents that it is qualified to perform the professional services required by this Agreement and possesses the necessary licenses and permits required to perform said services.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless County from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against County for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the

Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.6. Non-Exclusive Agreement. Consultant acknowledges that County may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of County. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

## **2.0 COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C", attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed \$250,000 Dollars.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Response unless the County or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to County's Project Manager for approval on a progress basis, but no more often than once each calendar month. Said invoice shall be based on the total of all Consultants' services that have been completed to County's sole satisfaction. County shall pay Consultant's invoice within forty-five (45) days from the date County receives said invoice. Each invoice shall describe in detail, the services performed and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to County or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the termination of this Agreement.

## **3.0 TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days after County delivers its Notice to Proceed. Said services shall be performed in strict compliance with the Project Schedule approved by County as set forth in Exhibit "D", attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the

parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays nor lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

#### **4.0 TERM OF CONTRACT AND TERMINATION**

4.1. Term. This Agreement shall commence upon approval by the County's Board of Supervisors and continue for a period of twenty-four (24) months, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The County reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the County.

4.3. Compensation. In the event of termination, County shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of County's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth in Exhibit "C". In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the County or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant, at no cost to County. Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

#### **5.0 INSURANCE REQUIREMENTS**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverage's:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability,

independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

(b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

(c) Workers' compensation insurance as required by the State of California.

(d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.1.1. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

(a) Additional insureds: "The County of Stanislaus and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with County."

(b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to County of Stanislaus."

(c) Other insurance: "Any other insurance maintained by the County of Stanislaus shall be excess and not contributing with the insurance provided by this policy."

5.2. Deductibles: Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Consultant's defense and indemnification obligations as set forth in this Agreement.

5.3. Certificates of Insurance: The Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County



its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Consultant.

5.4. Non-limiting: Nothing in this Section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Consultant and Consultant's officers, employees, agents, representatives or subcontractors for payments of damages to persons or property.

5.5. Primary Insurance: The Consultant's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.6. Endorsements: Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

5.7. California Admitted Insurer: Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-:VII; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.

5.8. Subcontractors: Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

5.9. Certificates of Insurance: At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

## **6.0 INDEMNIFICATION**

6.1. Indemnification: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and representatives.

6.2. Duty to Defend: The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

6.3. Duty to Cooperate: Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

6.4. Patent Rights: Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

## **7.0 GENERAL PROVISIONS**

7.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

7.2. Representatives. The Director of the Stanislaus County Department of Public Works, or his designee, shall be the representative of County for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the County, called for by this Agreement, except as otherwise expressly provided in this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

7.3. Project Managers. County shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with County during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by County.

7.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

**If to County:**

Stanislaus County Public Works  
Attn: Laurie Barton, Deputy Director  
1716 Morgan Road  
Modesto, CA 95358

**If to Consultant:**

Neil O. Anderson & Associates, Inc.  
Attn: Garret Hubbard, Principal  
902 Industrial Way  
Lodi, CA 95240

7.5. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

7.6. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Stanislaus County, California.

7.7. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without County's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of County's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

7.8. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of County. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

7.9. Ownership of Documents: All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of County. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of County. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of County and without liability or legal exposure to Consultant. County shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from County's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to County any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by County or its authorized representative, at no additional cost to the County.

7.10. Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, and provided to County may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualifies as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs County of such trade secret. The County will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The County shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

7.11. Responsibility for Errors: Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the County's representative, regarding any services rendered under this Agreement at no additional cost to County. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to County, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of County and to participate in any meeting required with regard to the correction.

7.12. Order of Precedence: In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the RFP or the Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the RFP and the Response shall govern over the RFP.

7.13. Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

7.14. No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of County and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

7.15. Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

7.16. Amendments: Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

7.17. Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

7.18. Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

7.19. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

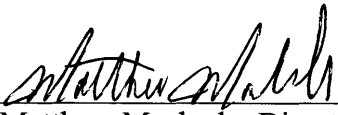
7.20. Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

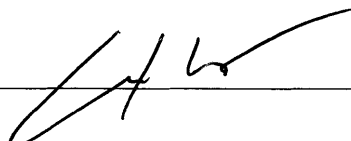
**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

COUNTY OF STANISLAUS

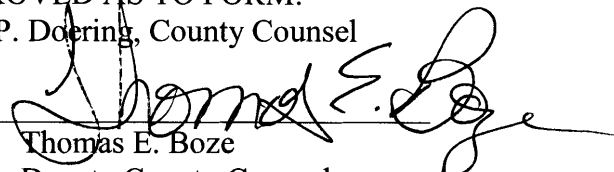
NEIL O. ANDERSON & ASSOCIATES, INC.

By:   
Matthew Machado, Director  
Department of Public Works

By: 

Corporate Title: V.P. CFO

APPROVED AS TO FORM:  
John P. Doering, County Counsel

By:   
Thomas E. Boze  
Deputy County Counsel

**EXHIBIT A**

**COUNTY'S REQUEST FOR PROPOSAL**



**DEPARTMENT OF PUBLIC WORKS**

**Matt Machado**  
Director

1010 10<sup>th</sup> Street, Suite 3500, Modesto, CA 95354  
Phone: 209.525.6550

Administration ♦ Development Services ♦ Transit  
Engineering Services ♦ Operations  
Landfill ♦ Facilities Services

## **REQUEST FOR PROPOSAL FOR MATERIALS TESTING SERVICES**

**June 11, 2008**

### **PROJECT SCOPE**

Material testing on roadwork construction is an integral portion of County projects. It ensures the contractor is providing construction results and product at the standard required by the approved plans and specifications.

During the course of constructing Public Works improvement projects, it is necessary for the County's Construction Administration Division to utilize the services of a materials testing laboratory to achieve or monitor compliance with the specification requirements of the project's contract.

In anticipation of the upcoming construction year(s), Stanislaus County Public Works Department is submitting a Request for Proposal (RFP) for material testing services to your consulting firm. All proposals received will be evaluated and scored by Public Works personnel.

The proposals shall include, as a minimum, billing rates for technicians, billing rates for different types of tests & analysis performed; turn-around time for test reports; summary of experience and qualification of Consultant and supporting staff members.

Proposals shall be submitted along with the attached proposal sheet. Each proposal shall be sealed and mailed to Chris Brady / Construction Division Manager, 1716 Morgan Road, Modesto, CA 95358.

If your company is interested in participating in this RFP, please submit your proposal by June 27, 2008.



## RFP WORKSHEET FOR TESTING & INSPECTION SERVICES

Testing & Inspection services may include, but not be limited to the following items:

TEST NO.	TESTING / INSPECTION SERVICE DESCRIPTION	PRICE PER TEST (\$)	TURN AROUND TIME (DAYS)
1	HOURLY RATE FOR SOIL TECHNICIAN CALTRANS I.A. CERTIFIED WITH NUCLEAR DENSITY GAUGE.		
2	HOURLY RATE FOR A.C.I. FIELD TESTING TECHNICIAN - GRADE 1		
3	HOURLY RATE FOR ASPHALT TECHNICIAN CALTRANS I.A. CERTIFIED		
4	HOURLY RATE FOR I.C.B.O./A.W.S. SPECIAL INSPECTOR (CONCRETE/MASONRY/WELDING)		
5	FIELD COMPACTION TESTS USING CALIFORNIA 231 TEST METHOD (NUCLEAR GAGE TESTING WITH MINIMUM OF 3 NUCLEAR SHOTS PER TEST INCLUDING MOISTURE - ROAD WORK)		
6	LABORATORY COMPACTION TEST USING CALIFORNIA 216 TEST METHOD (PART II MAX WET DENSITY & PERCENT RELATIVE COMPACTION)		
7	AGGREGATE TESTING USING CALIFORNIA 202 METHOD OF TESTS FOR SIEVE ANALYSIS OF FINE AND COURSE AGGREGATES.		
8	AGGREGATE TESTING USING CALIFORNIA 205 METHOD FOR DETERMINING PERCENTAGE OF CRUSHED PARTICLES.		
9	SAND EQUIVALENT USING CALIFORNIA 217 TEST METHOD.		
10	BULK SPECIFIC GRAVITY & DENSITY OF BITUMINOUS MIXTURES USING CALIFORNIA 308 TEST METHOD.		
11	DETERMINATION OF ASPHALT BINDER CONTENT OF BITUMINOUS PAVING MIXTURES BY THE IGNITION METHOD USING CALIFORNIA 382 TEST METHOD.		
12	RESISTANCE "R" VALUE OF TREATED AND UNTREATED BASES, SUBBASES, AND BASEMENT SOILS BY THE STABILOMETER TEST USING CALIFORNIA 301 TEST METHOD.		
13	GRAB BAG SOIL SAMPLING PICKUP (UP TO 75 POUNDS) WITHIN STANISLAUS COUNTY - PER SITE (EACH).		
14	COMPRESSIVE STRENGTH OF MOLDED CONCRETE CYLINDERS USING CALIFORNIA 521 TEST METHOD.		
15	ASTM D6938-08, "STANDARD TEST METHOD FOR IN-PLACE DENSITY & WATER CONTENT OF SOIL & SOIL-AGGREGATE BY NUCLEAR METHODS".		

**RFP WORKSHEET FOR TESTING & INSPECTION SERVICES  
(continued)**

Testing & Inspection services may include, but not be limited to the following items:

<b>TEST NO.</b>	<b>TESTING / INSPECTION SERVICE DESCRIPTION</b>	<b>PRICE PER TEST (\$)</b>	<b>TURN AROUND TIME (DAYS)</b>
16	ASTM D1557-07, "STANDARD TEST METHODS FOR LABORATORY COMPACTION CHARACTERISTICS OF SOIL USING MODIFIED EFFORT"		
17	SAMPLING FRESH CONCRETE USING CALIFORNIA 539 TEST METHOD; AND MAKING HANDLING, AND STORING CONCRETE COMPRESSIVE TEST SPECIMENS IN THE FIELD USING CALIFORNIA 540 TEST METHOD.		
18	CONCRETE CYLINDER PICKUP PER SET OF CYLINDERS WITHIN STANISLAUS COUNTY (EACH)		
19	CALTRANS TEST METHOD 366, "STABILOMETER VALUE"		
20	CALTRANS TEST METHOD 367, "OPTIMUM BITUMEN CONTENT"		
21	CALTRANS TEST METHOD 370, "MOISTURE CONTENT OF BITUMINOUS MIXTURES OR GRADED MINERALS AGGREGATES USING MICROWAVE OVENS"		
22	CALTRANS TEST 375, "RELATIVE COMPACTION OF ASPHALT CONCRETE IN PLACE"		
23	CALTRANS TEST 202, "SIEVE ANALYSIS OF FINE AND COARSE AGGREGATES"		
24	ASTM D4318, "PLASTICITY INDEX"		
25	ASTM D422, "SIEVE ANALYSIS OF SOIL ASTM D422"		
26	CALTRANS TEST METHOD 382, "ASPHALT DETERMINATION OF ASPHALT BINDER CONTENT OF BITUMINOUS PAVING MIXTURES BY THE IGNITION METHOD"		
27	CHEMICAL TESTING OF TREATED AND UNTREATED SOILS AND AGGREGATE BASES, ASTM TEST METHOD D. 2170, "KINEMATIC VISCOSITY", ASTM TEST METHOD 2171, "ABSOLUTE VISCOSITY"; AND ASTM D5, "PENETRATION"		
28	PERCOLATION TESTING TO DETERMINE SOIL'S PERCOLATION RATE. (FOR TRENCH AND BED PERCOLATION)		

## **REQUEST FOR PROPOSAL TESTING & INSPECTION SERVICES**

1. All work shall be performed under the responsible charge of a qualified licensed Civil Engineer in the State of California who is employed by the material-testing agency.
2. Consultant shall have a Quality Assurance Program (QAP) in effect during the entire time work is being performed under the contract. The program shall include, but not be limited to, quality control, quality assurance, and equipment calibration programs for the Consultant's main laboratory and for any satellite or project laboratories. The Consultant's QAP must be signed by the State of California licensed Civil Engineer employed by the material-testing agency.
3. The materials testing agency (MTA) shall have a quality assurance program to verify that acceptance testing is being performed correctly with properly calibrated equipment in good working order. The MTA shall participate in one or all of the following: the AASHTO Materials Reference Laboratory (AMRL); the Cement and Concrete Reference Laboratory (CCRL) inspection programs; the Caltrans Reference Sample Program (CRSP). A copy of the County's Quality Assurance Program is attached as Exhibit 1 for your reference (see Exhibit 1).
4. The successful Consultant who has been selected for this RFP shall within 5 working days, submit their quality control plan for review and approval. Failure to conform to this requirement may result in the disqualification of the Consultant's RFP submittal.
5. At it's own expense, Consultant shall provide all required licenses and permits and abide by and all Federal, State, and applicable local laws or rules affecting the work and shall maintain all required protection of property, employees, and the public.
6. All prices shall include travel to and from the test site as required.
7. All tests shall be taken within twenty-four (24) hours after being notified by County.
8. Test results shall be available within one (1) working day from the time the tests were taken for all tests but Tests No. 8, 9, and 10. Test results shall be available within three (3) working days from the time the tests were taken for Test No. 8 and test No. 9. Test results for Test No. 10 shall be available on the dates the cylinders are broken.
9. Failure to comply with the above specified time limits for test results shall be grounds for termination of the contract and/or may result in reduction in a 20% reduction in payment for the tests due to late notification of the results.

## **REQUEST FOR PROPOSAL TESTING & INSPECTION SERVICES**

10. The above costs are all inclusive. It shall include all costs for labor, parts, travel, per diem, freight, tax, etc. No other costs will be considered or allowed. The price bid for each test shall include the cost associated with providing documentation to the County. The cost for each test shall also include the cost of sample retrieval as may be required.
11. The unit price of each test is the net to the County, exclusive of Federal Excise tax and inclusive of the current California State and local sales & use tax rates and all delivery charges.
12. The Consultant guarantees that the offered equipment, material or services meet all safety requirements applicable in accordance with Cal-OSHA regulations and any other rule or regulation required by the County.
13. All test results and related certificates shall be provided within the time limits discussed in Item No. 8. Payments or a deduction as discussed in Item No. 9 shall be levied by the County against the Consultant to insure strict compliance.
14. The Consultant's laboratory shall meet the latest requirements, as applicable, of ASTM Designation D3666, "Evaluation of Inspection and testing Agencies for Bituminous Paving Materials", E329, "Recommended Practice for Inspection and testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction", and C1077, "Testing Concrete and Concrete Aggregates for use in Construction and Criteria for Laboratory Evaluation".
15. In the fields other than those covered by the ASTM and/or Caltrans standards, the Consultant's laboratory shall accept only those assignments from the County, which it is able to perform competently.
16. Upon completion of a project, a California licensed Civil or Geotechnical Engineer who is employed by the material-testing agency shall complete a "Materials Certificate". Said Engineer shall certify that all testing procedures were performed in conformance with the applicable standards and/or methods for that test. And that the results of the tests on acceptance samples indicate that the materials incorporated in the construction work were in conformity with the approved plans and specifications.
17. If any laboratory work is to be subcontracted, the Consultant shall notify the County. In addition, subcontractor's laboratory shall meet the same requirements as the Contractor's laboratory.

18. **Location of Project:** The project's services shall be provided at various locations within Stanislaus County. Testing personnel shall report to the County Project Manager/Inspector assigned to the specific project.
19. **General Terms:** The Consultant shall provide services for Highway Material Testing for a period of one year from the date of agreement acceptance by the County. The proposed agreement may be extended for additional two years terms upon mutual agreement between the Consultant and the County Public Works department.
20. **Coordination:** The County will require a cost proposal to be submitted by the Consultant for every project. Once the cost proposal is reviewed and accepted by the County, a purchase order will be created for each project requiring testing services.

The Testing Firm shall coordinate testing services with the County Project Manager/Inspector and other County personnel as required. Testing technicians shall report to the Project Manager/Inspector prior to performing an assigned test. The testing technician performing compaction tests shall receive a work order sheet for his/her assignments from the Project Manager/Inspector prior to testing.

Unless otherwise approved by the County Project Manger/Inspector, hours and work days of testing shall conform to each individual project's plans, specifications, and special provisions requirements.

The Testing Firm shall provide all necessary tools & equipment necessary for testing.

21. **Reporting Requirements:** Unless mutually agreed to by the Testing Firm and the County Project Manager/inspector, all testing results shall be recorded using current forms found in the latest edition of the Caltrans Construction Manual or forms provided to the Testing Firm by the County. All pertinent data shall be reported on said form(s).

The form shall include at a minimum: Project Name, date, time arrived, time departed, type of test performed, County Project Manager/Inspector ordering said test, technician performing said test, testing results, supporting documents & calculations, and any other comments.

22. **Prevailing Wages:** All services performed under the final agreement will be subject to payment of the applicable prevailing wage to the testing personnel performing the tests.

Bidders are hereby notified that pursuant to Section 1770 et seq. of the labor Code of the State of California, the Director of the Department of Industrial Relations of the State of California has ascertained the general prevailing rate of hourly wages and rates for overtime, Saturday, Sunday, and holiday work in the locality where this work is to be performed for each craft or type of worker or mechanic needed to execute the contract which will be awarded to the successful bidder. Refer to "GENERAL WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773, AND 1773.1.

The general prevailing wage rates determined by the Director of Industrial relations, for the County in which the work is to be done, are available at the County of Stanislaus Department of Public Works, Engineering Division, 1716 Morgan Road, Modesto, CA 95358 and the Division of Labor Statistics and Research web page located at <http://www.dir.ca.gov/DLSR/PWD/index.htm>. Current wage rates is available at the Department of Industrial Relations homepage located at [http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html).

The Consultant shall post a copy of the prevailing wage rates so they are readily accessible by all employees.

The Consultant and all Sub-consultants shall comply with the provisions of Section 1776 of the California labor Code, regarding payroll records. Compliance with said Section 1776 shall be the Consultants responsibility.

The Consultant shall comply with the provisions of labor Code Section 1775.

The Consultant may pay compensation to workers in excess of the prevailing wage rate as determined above, however, such payments shall not be the basis for any claim for additional compensation to the Consultant by the County.

The submittal of certified payroll records from the Consultant will be required when they are needed to verify that the Consultant is in compliance with the State Labor Code. The payroll records shall be on a form and at a frequency as required by the County Public Works Director and the State Labor Code. Failure to provide the records when requested will result in the applicable penalties being levied against the Contractor to effectuate strict compliance.

23. **Compensation:** Consultant will be compensated on a time and materials basis, based on the rates for specific tests as specified in the approved Consultant's Cost Proposal. Billable time begins at the project site and no travel time will be reimbursed to the Consultant. The specified rates shall include direct salary costs, employee benefits, and overhead.

If the project fails any tests or inspections, retests or reinspections may be required. Retests and reinspections will be billed at the same rates as described above. Retests shall be marked on reports and invoices to help facilitate back charging to the contractor, if allowed by the project contract.

24. **Invoicing & Payment:** The Consultant shall submit detailed invoices to the County Project Manager/Inspector on a monthly basis. Billings shall include a spreadsheet style listing showing project name, test performed, date performed, personnel or technician performing said test, County Project Manager/Inspector ordering the test, cost per unit and miles and mileage reimbursement. The spreadsheet shall reflect summations of each pertinent category with billing totals, such as  $(\text{cost per test}) \times (\text{Number of Tests}) + (\text{mileage} \times \text{mileage rate}) = \text{cost per deployment for that day}$  with all items totaled at the bottom of the sheet.

In addition, all invoices shall clearly state whether or not the tests billed met the contract time for delivery.

**EXHIBIT 1**

**STANISLAUS COUNTY PUBLIC WORKS QUALITY ASSURANCE  
PROGRAM**





## STANISLAUS COUNTY PUBLIC WORKS QUALITY ASSURANCE PROGRAM

### SCOPE

The Quality Assurance Program is a sampling and testing program to provide assurance that the materials and workmanship incorporated in highway construction projects are in conformance with the contract specifications. The Quality Assurance Program (QAP) outlined herein shall be followed in the performance of all State and Federal aid highway projects which are not on the National Highway System.

### DEFINITIONS

**Acceptance Test** - The procedure to be used to determine the quality and acceptability of materials and workmanship incorporated into the project. Acceptance testing may be by visual inspection, certificate of compliance, or laboratory testing according to the plans and specifications, this QAP, or accepted industry standards. Both Caltrans Test Methods and the American Society for Testing and Materials (ASTM) test methods are acceptable.

**Project Inspector** - The county representative assigned to the project for the purpose of inspecting field work, and coordinating the sampling and testing of materials to verify compliance to the plans and specifications.

**Resident Engineer** - The county representative, licensed as a civil engineer in the State of California, that is responsible for the overall administration of the project to assure compliance to the plans and specifications.

**Material Testing Agency** - The qualified licensed commercial firm, that regularly performs material testing as a business, hired by Stanislaus County to do the field sampling and laboratory testing. All work performed by this firm shall be under the direction of a qualified licensed Civil Engineer in the State of California who is employed on a full time basis by the material testing agency.

### QAP PROCEDURAL REQUIREMENTS

#### 1. ACCEPTANCE TESTING

The plans and specifications will determine the method of acceptance for each individual project. The materials that need to be inspected at the job site shall be inspected by the project inspector. When the project inspector determines that field sampling and testing is necessary per the specifications or required by recognized industry standards, the project inspector shall coordinate the required acceptance tests (AT) with the material testing agency (MTA). The MTA shall report AT results directly to the project inspector on an expedited basis, such as by fax or telephone, to be followed by a written report.

When sampling products such as portland cement concrete, asphalt concrete, and other such materials, the time of such sampling shall be varied with respect to time of day insofar as possible, in order to avoid a predictable sampling routine.



## **2. TESTING OF MANUFACTURED MATERIALS**

Certificates of compliance will usually be accepted for materials listed in Exhibit 16-T of the Caltrans Local Assistance Procedures Manual. In general, Stanislaus County will accept certificates of compliance from the manufacturer of products in which the industry has demonstrated a high degree of reliability in meeting specifications. The resident engineer or the project inspector will designate on the approved submittal sheet when sampling, inspection, and/or testing is needed.

## **3. FREQUENCY OF TESTING**

The frequency of sampling and testing shall be conducted in accordance with the plans and specifications. If not so specified, sampling and testing shall be as indicated in Exhibit 16-R, Frequency Tables, of the Caltrans Local Assistance Procedures Manual.

## **4. TEST FAILURES**

Whenever failures occur, sufficient additional acceptance tests should be taken to isolate the affected work. A description of corrective measures taken and results of any additional tests shall be included in the project records.

## **5. RECORD OF TEST RESULTS**

The project inspector shall maintain a material and testing "Summary Log" for each material requiring multiple sampling and testing as defined in the specifications or frequency table. The Summary Log shall include appropriate data such as station location, depth of test sample, approximate quantity of material represented by the test sample, test result, and tester. Failing test results shall be cross referenced to subsequent retesting on the Summary Log. All material records of samples and tests, material releases and certificates of compliance for a given project shall be incorporated into the resident engineer's project file.

## **6. INDEPENDENT ASSURANCE SAMPLING AND TESTING**

The material testing agency (MTA) shall have a quality assurance program to verify that acceptance testing is being performed correctly with properly calibrated equipment in good working order. The MTA shall participate in one or all of the following; the AASHTO Materials Reference Laboratory (AMRL); the Cement and Concrete Reference Laboratory (CCRL) inspection programs; the Caltrans Reference Sample Program.

  
\_\_\_\_\_  
**MATT MACHADO, PE**  
Director of Public Works

July 31, 2007

**EXHIBIT B**

**CONSULTANT'S RESPONSE TO COUNTY'S REQUEST FOR PROPOSAL**

August 26 - 1:30 PM



GEOTECHNICAL  
ENVIRONMENTAL  
INSPECTIONS & TESTING  
LABORATORY SERVICES  
POOL ENGINEERING  
POST TENSION DESIGN

June 27, 2008

Mr. Chris Brady, Construction Division Manager  
Stanislaus County Construction Administration Division  
1716 Morgan Road  
Modesto CA 95358

Subject: **Request for Proposals for Materials Testing Services  
Stanislaus County, California**

Mr. Brady:

Thank you for the opportunity to submit our proposal to provide Materials Testing Services for Stanislaus County. Neil O. Anderson & Associates, Inc. (NOA) is an experienced quality consulting engineering company with a high level of client service.

NOA has been in business for over 18 years and currently has over 70 employees with several offices in the Central Valley. We are a full service environmental, geotechnical, structural engineering and special inspection/materials testing firm. We have provided materials testing services on public and private projects for cities and counties throughout Central and Northern California including over 430 projects within Stanislaus County since 2000.

Our proposed staff will be dispatched when requested, perform the required inspections with the appropriate equipment per project documents, and in the timeframe requested. By communicating and being proactive, our inspectors and technicians have the experience and ability to address and solve problems on site.

Our laboratories follow our Quality Assurance Program, we are inspected by CCRL, AMRL, approved by CDOT, validated by the Corp of Engineers, and meet ASTM Designations, D3666, E329, and C1077. We are a certified SBE company, and through a mentoring partnership, we can comply with DVBE/DBE requirements.

Field inspectors are available by cellular phones to county personnel and are equipped with laptop computers and portable printers which allow them to leave field reports on site the day of inspections. All final engineering and testing/inspection documents will be reviewed and signed by one of five licensed geotechnical engineers in our company.

ANGELS CAMP • LODI • MODESTO • RENO • SACRAMENTO • WALNUT CREEK

LODI 902 Industrial Way • Lodi, CA 95240 • 209.367.3701 • FAX 209-333-8303 • www.noanderson.com

Our custom project management and accounting system will be utilized to provide Stanislaus County up to date percent project completion and, billed vs. budgeted information.

NOA's commitment to service and our ability to communicate have allowed us to maintain long term relationships with existing clients while our solid reputation affords us new opportunities and growth.

On the following pages, please find:

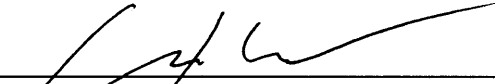
- Caltrans Certificate of Qualification for a Testing Laboratory
- Resumes/Certifications of Key Personnel
- References and Recent Projects
- Letters of Recommendations
- Worksheet for Testing & Inspection Services

We would be remiss not to again mention that being a service oriented company allows us to provide a quality product in a timely and cost efficient manner.

We are available to meet at your convenience and discuss any questions you may have, or how we could tailor our services to your specific requirements.

NOA looks forward to the opportunity to provide Materials Testing Services to Stanislaus County and becoming a part of your construction team.

Respectfully Submitted,  
***NEIL O. ANDERSON & ASSOCIATES, INC.***

  
\_\_\_\_\_  
Garret S.H. Hubbart, Principal  
Geotechnical Engineer 2588  
[garret.hubbart@noanderson.com](mailto:garret.hubbart@noanderson.com)



CALIFORNIA DEPARTMENT OF TRANSPORTATION

District 10 Independent Assurance

*Caltrans*

## CERTIFICATE OF QUALIFICATION

### for a TESTING LABORATORY

**Neil O. Anderson & Associates, Inc.**

**902 Industrial Way**

**Lodi, CA 95240**

The testing laboratory named above has met the requirements as outlined in Caltrans Manual for Quality Control and Quality Assurance.

This Certificate is valid for a period not to exceed twelve (12) months from the date of approval shown below. Should any evidence indicate otherwise, the facility will be re-inspected as often as the Engineer or Independent Assurance deems necessary. Although various criteria for qualification have been observed, it is presumed that other pertinent considerations to insure the integrity of testing operations have been met. This lab must maintain full compliance with all applicable sections of the State of California Department of Transportation Standard Specifications, Special Provisions, Standard Test Methods, and safety requirements of the California Division of Occupational Safety and Health.

Approval date: January 30, 2008

for: *DAVE DHILLON P.E.*

District Materials Engineer

by:



Robert D. Rogers (209) 481-5248

Certified Independent Assurance Sampler and Tester

Certificate Number: 054

**EXHIBIT C**

**CONSULTANTS FEE SCHEDULE**

## RFP WORKSHEET FOR TESTING & INSPECTION SERVICES

Testing & Inspection services may include, but not be limited to the following items:

TEST NO.	TESTING / INSPECTION SERVICE DESCRIPTION	PRICE PER TEST (\$)	TURN AROUND TIME (DAYS)
1	HOURLY RATE FOR SOIL TECHNICIAN CALTRANS I.A. CERTIFIED WITH NUCLEAR DENSITY GAUGE.	94/hr	1
2	HOURLY RATE FOR A.C.I. FIELD TESTING TECHNICIAN - GRADE 1	84/hr	1
3	HOURLY RATE FOR ASPHALT TECHNICIAN CALTRANS I.A. CERTIFIED	90/hr	1
4	HOURLY RATE FOR I.C.B.O./A.W.S. SPECIAL INSPECTOR (CONCRETE/MASONRY/WELDING)	88/hr	1
5	FIELD COMPACTION TESTS USING CALIFORNIA 231 TEST METHOD (NUCLEAR GAGE TESTING WITH MINIMUM OF 3 NUCLEAR SHOTS PER TEST INCLUDING MOISTURE - ROAD WORK)	See Note B	1
6	LABORATORY COMPACTION TEST USING CALIFORNIA 216 TEST METHOD (PART II MAX WET DENSITY & PERCENT RELATIVE COMPACTION)	180/ea	1
7	AGGREGATE TESTING USING CALIFORNIA 202 METHOD OF TESTS FOR SIEVE ANALYSIS OF FINE AND COURSE AGGREGATES.	125/ea	1
8	AGGREGATE TESTING USING CALIFORNIA 205 METHOD FOR DETERMINING PERCENTAGE OF CRUSHED PARTICLES.	165/ea	2 days See Note A
9	SAND EQUIVALENT USING CALIFORNIA 217 TEST METHOD.	155/ea	2 days See Note A
10	BULK SPECIFIC GRAVITY & DENSITY OF BITUMINOUS MIXTURES USING CALIFORNIA 308 TEST METHOD.	550/ea	1
11	DETERMINATION OF ASPHALT BINDER CONTENT OF BITUMINOUS PAVING MIXTURES BY THE IGNITION METHOD USING CALIFORNIA 382 TEST METHOD.	155/ea	1
12	RESISTANCE "R" VALUE OF TREATED AND UNTREATED BASES, SUBBASES, AND BASEMENT SOILS BY THE STABILOMETER TEST USING CALIFORNIA 301 TEST METHOD.	250/ea	3 days See Note A
13	GRAB BAG SOIL SAMPLING PICKUP (UP TO 75 POUNDS) WITHIN STANISLAUS COUNTY - PER SITE (EACH).	125/ea	1
14	COMPRESSIVE STRENGTH OF MOLDED CONCRETE CYLINDERS USING CALIFORNIA 521 TEST METHOD.	26/ea	1
15	ASTM D6938-08, "STANDARD TEST METHOD FOR IN-PLACE DENSITY & WATER CONTENT OF SOIL & SOIL-AGGREGATE BY NUCLEAR METHODS".	See Note B	1

**NOTES:**

A - Test specifications require more time than RFP turn around time of 1 day

B - Included in hourly Test #1 above

C - Included in hourly Test #2 above. NOA will provide on site cylinder storage containers

Services are billed in 2, 4 & 8 hour increments.



**RFP WORKSHEET FOR TESTING & INSPECTION SERVICES  
(continued)**

Testing & Inspection services may include, but not be limited to the following items:

TEST NO.	TESTING / INSPECTION SERVICE DESCRIPTION	PRICE PER TEST (\$)	TURN AROUND TIME (DAYS)
16	ASTM D1557-07, "STANDARD TEST METHODS FOR LABORATORY COMPACTION CHARACTERISTICS OF SOIL USING MODIFIED EFFORT"	180/ea	1
17	SAMPLING FRESH CONCRETE USING CALIFORNIA 539 TEST METHOD; AND MAKING HANDLING, AND STORING CONCRETE COMPRESSIVE TEST SPECIMENS IN THE FIELD USING CALIFORNIA 540 TEST METHOD.	See Note C	1
18	CONCRETE CYLINDER PICKUP PER SET OF CYLINDERS WITHIN STANISLAUS COUNTY (EACH)	80/ea	1
19	CALTRANS TEST METHOD 366, "STABILOMETER VALUE"	420/ea	1
20	CALTRANS TEST METHOD 367, "OPTIMUM BITUMEN CONTENT"	2800/ea	1
21	CALTRANS TEST METHOD 370, "MOISTURE CONTENT OF BITUMINOUS MIXTURES OR GRADED MINERALS AGGREGATES USING MICROWAVE OVENS"	35/ea	1
22	CALTRANS TEST 375, "RELATIVE COMPACTION OF ASPHALT CONCRETE IN PLACE"	See Note B	2 days See Note A
23	CALTRANS TEST 202, "SIEVE ANALYSIS OF FINE AND COARSE AGGREGATES"	140/ea	1
24	ASTM D4318, "PLASTICITY INDEX"	120/ea	1
25	ASTM D422, "SIEVE ANALYSIS OF SOIL ASTM D422"	125/ea	1
26	CALTRANS TEST METHOD 382, "ASPHALT DETERMINATION OF ASPHALT BINDER CONTENT OF BITUMINOUS PAVING MIXTURES BY THE IGNITION METHOD"	155/ea	1
27	CHEMICAL TESTING OF TREATED AND UNTREATED SOILS AND AGGREGATE BASES, ASTM TEST METHOD D. 2170, "KINEMATIC VISCOSITY", ASTM TEST METHOD 2171, "ABSOLUTE VISCOSITY"; AND ASTM D5, "PENETRATION"	500/ea	2 days See Note A
28	PERCOLATION TESTING TO DETERMINE SOIL'S PERCOLATION RATE. (FOR TRENCH AND BED PERCOLATION)	80	2 days See note A

**NOTES:**

A - Test specifications require more time than RFP turn around time of 1 day

B - Included in hourly Test #1 above (page 1)

C - Included in hourly Test #2 above (page 1). NOA will provide on site cylinder storage containers

Services are billed in 2, 4 & 8 hour increments.

**EXHIBIT D**  
**PROJECT SCHEDULE**

**Project schedule is not applicable to this contract.**

**STANISLAUS COUNTY PUBLIC WORKS  
ENGINEERING DIVISION  
1716 MORGAN ROAD  
MODESTO, CA 95358**

**TRANSMITTAL**

Date: November 12, 2008  
To: Suzi Seibert, Assistant Clerk of the Board  
Re: 2<sup>nd</sup> Attachment for October 21, 2008 - Item \*C-4  
Agreement – Wallace-Kuhl & Associates, Inc.  
From: Linda Allsop, Morgan Road  
209-525-4157

BOARD OF SUPERVISORS  
2008 NOV 12 P 3:50

Hi Suzi:

Enclosed for your file is the 2nd attachment for Item \*C-4, October 21, 2008.

**Approval of Agreements with Neil O. Anderson & Associates and Wallace-Kuhl & Associates to Provide Material Testing Services for Various Public Works Department Projects through November 2010**

Have a good day!

**STANISLAUS COUNTY  
PROFESSIONAL DESIGN SERVICES AGREEMENT**

This Agreement is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and Wallace-Kuhl & Associates, Inc. hereinafter referred to as "Consultant".

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0 PROFESSIONAL SERVICES TO BE PROVIDED BY CONSULTANT**

1.1. Scope of Services: Consultant shall provide the professional services described in the County's Request for Proposal ("RFP") attached hereto as Exhibit "A" and incorporated herein by reference and Consultant's Response to County's RFP (the "Response"). A copy of said Response is attached hereto as Exhibit "B" and incorporated herein by this reference.

1.2. Professional Practices: All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise County of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Representations: Consultant represents that it has reviewed the RFP and that in its professional judgment the services to be performed under this Agreement can be performed within the maximum fee set forth herein below and within the time specified in the Project Schedule attached hereto. Consultant represents that it is qualified to perform the professional services required by this Agreement and possesses the necessary licenses and permits required to perform said services.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless County from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against County for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the

Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.6. Non-Exclusive Agreement. Consultant acknowledges that County may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of County. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

## **2.0 COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C", attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed \$250,000 Dollars.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Response unless the County or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to County's Project Manager for approval on a progress basis, but no more often than once each calendar month. Said invoice shall be based on the total of all Consultants' services that have been completed to County's sole satisfaction. County shall pay Consultant's invoice within forty-five (45) days from the date County receives said invoice. Each invoice shall describe in detail, the services performed and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to County or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the termination of this Agreement.

## **3.0 TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days after County delivers its Notice to Proceed. Said services shall be performed in strict compliance with the Project Schedule approved by County as set forth in Exhibit "D", attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the

parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays nor lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

#### **4.0 TERM OF CONTRACT AND TERMINATION**

4.1. Term. This Agreement shall commence upon approval by the County's Board of Supervisors and continue for a period of twenty-four (24) months, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The County reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the County.

4.3. Compensation. In the event of termination, County shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of County's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth in Exhibit "C". In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the County or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant, at no cost to County. Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

#### **5.0 INSURANCE REQUIREMENTS**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverage's:

- (a) Comprehensive general liability, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability,

independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

(b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

(c) Workers' compensation insurance as required by the State of California.

(d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.1.1. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

(a) Additional insureds: "The County of Stanislaus and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with County."

(b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to County of Stanislaus."

(c) Other insurance: "Any other insurance maintained by the County of Stanislaus shall be excess and not contributing with the insurance provided by this policy."

5.2. Deductibles: Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Consultant's defense and indemnification obligations as set forth in this Agreement.

5.3. Certificates of Insurance: The Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County

its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Consultant.

5.4. Non-limiting: Nothing in this Section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Consultant and Consultant's officers, employees, agents, representatives or subcontractors for payments of damages to persons or property.

5.5. Primary Insurance: The Consultant's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.6. Endorsements: Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

5.7. California Admitted Insurer: Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-VII; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.

5.8. Subcontractors: Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

5.9. Certificates of Insurance: At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.



## **6.0 INDEMNIFICATION**

6.1. Indemnification: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and representatives.

6.2. Duty to Defend: The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

6.3. Duty to Cooperate: Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

6.4. Patent Rights: Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

## **7.0 GENERAL PROVISIONS**

7.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

7.2. Representatives. The Director of the Stanislaus County Department of Public Works, or his designee, shall be the representative of County for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the County, called for by this Agreement, except as otherwise expressly provided in this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

7.3. Project Managers. County shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with County during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by County.

7.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

**If to County:**  
Stanislaus County Public Works  
Attn: Laurie Barton, Deputy Director  
1716 Morgan Road  
Modesto, CA 95358

**If to Consultant:**  
Wallace-Kuhl & Associates, Inc.  
Attn: Todd G. Kamisky, Senior Engineer  
3410 West Hammer Lane, Suite F  
Stockton, CA 95219

7.5. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

7.6. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Stanislaus County, California.

7.7. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without County's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of County's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

7.8. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of County. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

7.9. Ownership of Documents: All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of County. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of County. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of County and without liability or legal exposure to Consultant. County shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from County's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to County any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by County or its authorized representative, at no additional cost to the County.

7.10. Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, and provided to County may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualifies as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs County of such trade secret. The County will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The County shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

7.11. Responsibility for Errors: Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the County's representative, regarding any services rendered under this Agreement at no additional cost to County. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to County, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of County and to participate in any meeting required with regard to the correction.

7.12. Order of Precedence: In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the RFP or the Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the RFP and the Response shall govern over the RFP.

7.13. Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

7.14. No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of County and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

7.15. Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

7.16. Amendments: Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

7.17. Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

7.18. Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

7.19. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.


7.20. Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

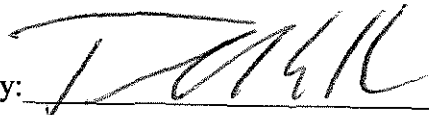
**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

**COUNTY OF STANISLAUS**

**WALLACE-KUHL & ASSOCIATES, INC.**

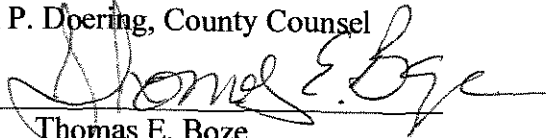
By:   
Matthew Machado, Director  
Department of Public Works

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

Corporate Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

John P. Doering, County Counsel

By:   
Thomas E. Boze  
Deputy County Counsel

**EXHIBIT A**

**COUNTY'S REQUEST FOR PROPOSAL**



**DEPARTMENT OF PUBLIC WORKS**

**Matt Machado**  
Director

1010 10<sup>th</sup> Street, Suite 3500, Modesto, CA 95354  
Phone: 209.525.6550

Administration ♦ Development Services ♦ Transit  
Engineering Services ♦ Operations  
Landfill ♦ Facilities Services

## **REQUEST FOR PROPOSAL FOR MATERIALS TESTING SERVICES**

**June 11, 2008**

### **PROJECT SCOPE**

Material testing on roadwork construction is an integral portion of County projects. It ensures the contractor is providing construction results and product at the standard required by the approved plans and specifications.

During the course of constructing Public Works improvement projects, it is necessary for the County's Construction Administration Division to utilize the services of a materials testing laboratory to achieve or monitor compliance with the specification requirements of the project's contract.

In anticipation of the upcoming construction year(s), Stanislaus County Public Works Department is submitting a Request for Proposal (RFP) for material testing services to your consulting firm. All proposals received will be evaluated and scored by Public Works personnel.

The proposals shall include, as a minimum, billing rates for technicians, billing rates for different types of tests & analysis performed; turn-around time for test reports; summary of experience and qualification of Consultant and supporting staff members.

Proposals shall be submitted along with the attached proposal sheet. Each proposal shall be sealed and mailed to Chris Brady / Construction Division Manager, 1716 Morgan Road, Modesto, CA 95358.

If your company is interested in participating in this RFP, please submit your proposal by June 27, 2008.

## RFP WORKSHEET FOR TESTING & INSPECTION SERVICES

Testing & Inspection services may include, but not be limited to the following items:

TEST NO.	TESTING / INSPECTION SERVICE DESCRIPTION	PRICE PER TEST (\$)	TURN AROUND TIME (DAYS)
1	HOURLY RATE FOR SOIL TECHNICIAN CALTRANS I.A. CERTIFIED WITH NUCLEAR DENSITY GAUGE.		
2	HOURLY RATE FOR A.C.I. FIELD TESTING TECHNICIAN - GRADE 1		
3	HOURLY RATE FOR ASPHALT TECHNICIAN CALTRANS I.A. CERTIFIED		
4	HOURLY RATE FOR I.C.B.O./A.W.S. SPECIAL INSPECTOR (CONCRETE/MASONRY/WELDING)		
5	FIELD COMPACTION TESTS USING CALIFORNIA 231 TEST METHOD (NUCLEAR GAGE TESTING WITH MINIMUM OF 3 NUCLEAR SHOTS PER TEST INCLUDING MOISTURE - ROAD WORK)		
6	LABORATORY COMPACTION TEST USING CALIFORNIA 216 TEST METHOD (PART II MAX WET DENSITY & PERCENT RELATIVE COMPACTION)		
7	AGGREGATE TESTING USING CALIFORNIA 202 METHOD OF TESTS FOR SIEVE ANALYSIS OF FINE AND COURSE AGGREGATES.		
8	AGGREGATE TESTING USING CALIFORNIA 205 METHOD FOR DETERMINING PERCENTAGE OF CRUSHED PARTICLES.		
9	SAND EQUIVALENT USING CALIFORNIA 217 TEST METHOD.		
10	BULK SPECIFIC GRAVITY & DENSITY OF BITUMINOUS MIXTURES USING CALIFORNIA 308 TEST METHOD.		
11	DETERMINATION OF ASPHALT BINDER CONTENT OF BITUMINOUS PAVING MIXTURES BY THE IGNITION METHOD USING CALIFORNIA 382 TEST METHOD.		
12	RESISTANCE "R" VALUE OF TREATED AND UNTREATED BASES, SUBBASES, AND BASEMENT SOILS BY THE STABILOMETER TEST USING CALIFORNIA 301 TEST METHOD.		
13	GRAB BAG SOIL SAMPLING PICKUP (UP TO 75 POUNDS) WITHIN STANISLAUS COUNTY – PER SITE (EACH).		
14	COMPRESSIVE STRENGTH OF MOLDED CONCRETE CYLINDERS USING CALIFORNIA 521 TEST METHOD.		
15	ASTM D6938-08, "STANDARD TEST METHOD FOR IN-PLACE DENSITY & WATER CONTENT OF SOIL & SOIL-AGGREGATE BY NUCLEAR METHODS".		



**RFP WORKSHEET FOR TESTING & INSPECTION SERVICES  
(continued)**

Testing & Inspection services may include, but not be limited to the following items:

TEST NO.	TESTING / INSPECTION SERVICE DESCRIPTION	PRICE PER TEST (\$)	TURN AROUND TIME (DAYS)
16	ASTM D1557-07, "STANDARD TEST METHODS FOR LABORATORY COMPACTION CHARACTERISTICS OF SOIL USING MODIFIED EFFORT"		
17	SAMPLING FRESH CONCRETE USING CALIFORNIA 539 TEST METHOD; AND MAKING HANDLING, AND STORING CONCRETE COMPRESSIVE TEST SPECIMENS IN THE FIELD USING CALIFORNIA 540 TEST METHOD.		
18	CONCRETE CYLINDER PICKUP PER SET OF CYLINDERS WITHIN STANISLAUS COUNTY (EACH)		
19	CALTRANS TEST METHOD 366, "STABILOMETER VALUE"		
20	CALTRANS TEST METHOD 367, "OPTIMUM BITUMEN CONTENT"		
21	CALTRANS TEST METHOD 370, "MOISTURE CONTENT OF BITUMINOUS MIXTURES OR GRADED MINERALS AGGREGATES USING MICROWAVE OVENS"		
22	CALTRANS TEST 375, "RELATIVE COMPACTION OF ASPHALT CONCRETE IN PLACE"		
23	CALTRANS TEST 202, "SIEVE ANALYSIS OF FINE AND COARSE AGGREGATES"		
24	ASTM D4318, "PLASTICITY INDEX"		
25	ASTM D422, "SIEVE ANALYSIS OF SOIL ASTM D422"		
26	CALTRANS TEST METHOD 382, "ASPHALT DETERMINATION OF ASPHALT BINDER CONTENT OF BITUMINOUS PAVING MIXTURES BY THE IGNITION METHOD"		
27	CHEMICAL TESTING OF TREATED AND UNTREATED SOILS AND AGGREGATE BASES, ASTM TEST METHOD D. 2170, "KINEMATIC VISCOSITY", ASTM TEST METHOD 2171, "ABSOLUTE VISCOSITY"; AND ASTM D5, "PENETRATION"		
28	PERCOLATION TESTING TO DETERMINE SOIL'S PERCOLATION RATE. (FOR TRENCH AND BED PERCOLATION)		

## **REQUEST FOR PROPOSAL TESTING & INSPECTION SERVICES**

1. All work shall be performed under the responsible charge of a qualified licensed Civil Engineer in the State of California who is employed by the material-testing agency.
2. Consultant shall have a Quality Assurance Program (QAP) in effect during the entire time work is being performed under the contract. The program shall include, but not be limited to, quality control, quality assurance, and equipment calibration programs for the Consultant's main laboratory and for any satellite or project laboratories. The Consultant's QAP must be signed by the State of California licensed Civil Engineer employed by the material-testing agency.
3. The materials testing agency (MTA) shall have a quality assurance program to verify that acceptance testing is being performed correctly with properly calibrated equipment in good working order. The MTA shall participate in one or all of the following: the AASHTO Materials Reference Laboratory (AMRL); the Cement and Concrete Reference Laboratory (CCRL) inspection programs; the Caltrans Reference Sample Program (CRSP). A copy of the County's Quality Assurance Program is attached as Exhibit 1 for your reference (see Exhibit 1).
4. The successful Consultant who has been selected for this RFP shall within 5 working days, submit their quality control plan for review and approval. Failure to conform to this requirement may result in the disqualification of the Consultant's RFP submittal.
5. At its own expense, Consultant shall provide all required licenses and permits and abide by and all Federal, State, and applicable local laws or rules affecting the work and shall maintain all required protection of property, employees, and the public.
6. All prices shall include travel to and from the test site as required.
7. All tests shall be taken within twenty-four (24) hours after being notified by County.
8. Test results shall be available within one (1) working day from the time the tests were taken for all tests but Tests No. 8, 9, and 10. Test results shall be available within three (3) working days from the time the tests were taken for Test No. 8 and test No. 9. Test results for Test No. 10 shall be available on the dates the cylinders are broken.
9. Failure to comply with the above specified time limits for test results shall be grounds for termination of the contract and/or may result in reduction in a 20% reduction in payment for the tests due to late notification of the results.

## **REQUEST FOR PROPOSAL TESTING & INSPECTION SERVICES**

10. The above costs are all inclusive. It shall include all costs for labor, parts, travel, per diem, freight, tax, etc. No other costs will be considered or allowed. The price bid for each test shall include the cost associated with providing documentation to the County. The cost for each test shall also include the cost of sample retrieval as may be required.
11. The unit price of each test is the net to the County, exclusive of Federal Excise tax and inclusive of the current California State and local sales & use tax rates and all delivery charges.
12. The Consultant guarantees that the offered equipment, material or services meet all safety requirements applicable in accordance with Cal-OSHA regulations and any other rule or regulation required by the County.
13. All test results and related certificates shall be provided within the time limits discussed in Item No. 8. Payments or a deduction as discussed in Item No. 9 shall be levied by the County against the Consultant to insure strict compliance.
14. The Consultant's laboratory shall meet the latest requirements, as applicable, of ASTM Designation D3666, "Evaluation of Inspection and testing Agencies for Bituminous Paving Materials", E329, "Recommended Practice for Inspection and testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction", and C1077, "Testing Concrete and Concrete Aggregates for use in Construction and Criteria for Laboratory Evaluation".
15. In the fields other than those covered by the ASTM and/or Caltrans standards, the Consultant's laboratory shall accept only those assignments from the County, which it is able to perform competently.
16. Upon completion of a project, a California licensed Civil or Geotechnical Engineer who is employed by the material-testing agency shall complete a "Materials Certificate". Said Engineer shall certify that all testing procedures were performed in conformance with the applicable standards and/or methods for that test. And that the results of the tests on acceptance samples indicate that the materials incorporated in the construction work were in conformity with the approved plans and specifications.
17. If any laboratory work is to be subcontracted, the Consultant shall notify the County. In addition, subcontractor's laboratory shall meet the same requirements as the Contractor's laboratory.

18. **Location of Project:** The project's services shall be provided at various locations within Stanislaus County. Testing personnel shall report to the County Project Manager/Inspector assigned to the specific project.
19. **General Terms:** The Consultant shall provide services for Highway Material Testing for a period of one year from the date of agreement acceptance by the County. The proposed agreement may be extended for additional two years terms upon mutual agreement between the Consultant and the County Public Works department.
20. **Coordination:** The County will require a cost proposal to be submitted by the Consultant for every project. Once the cost proposal is reviewed and accepted by the County, a purchase order will be created for each project requiring testing services.

The Testing Firm shall coordinate testing services with the County Project Manager/Inspector and other County personnel as required. Testing technicians shall report to the Project Manager/Inspector prior to performing an assigned test. The testing technician performing compaction tests shall receive a work order sheet for his/her assignments from the Project Manager/Inspector prior to testing.

Unless otherwise approved by the County Project Manger/Inspector, hours and work days of testing shall conform to each individual project's plans, specifications, and special provisions requirements.

The Testing Firm shall provide all necessary tools & equipment necessary for testing.

21. **Reporting Requirements:** Unless mutually agreed to by the Testing Firm and the County Project Manager/inspector, all testing results shall be recorded using current forms found in the latest edition of the Caltrans Construction Manual or forms provided to the Testing Firm by the County. All pertinent data shall be reported on said form(s).

The form shall include at a minimum: Project Name, date, time arrived, time departed, type of test performed, County Project Manager/Inspector ordering said test, technician performing said test, testing results, supporting documents & calculations, and any other comments.

22. **Prevailing Wages:** All services performed under the final agreement will be subject to payment of the applicable prevailing wage to the testing personnel performing the tests.

Bidders are hereby notified that pursuant to Section 1770 et seq. of the labor Code of the State of California, the Director of the Department of Industrial Relations of the State of California has ascertained the general prevailing rate of hourly wages and rates for overtime, Saturday, Sunday, and holiday work in the locality where this work is to be performed for each craft or type of worker or mechanic needed to execute the contract which will be awarded to the successful bidder. Refer to "GENERAL WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773, AND 1773.1.

The general prevailing wage rates determined by the Director of Industrial relations, for the County in which the work is to be done, are available at the County of Stanislaus Department of Public Works, Engineering Division, 1716 Morgan Road, Modesto, CA 95358 and the Division of Labor Statistics and Research web page located at <http://www.dir.ca.gov/DLSR/PWD/index.htm>. Current wage rates is available at the Department of Industrial Relations homepage located at [http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html).

The Consultant shall post a copy of the prevailing wage rates so they are readily accessible by all employees.

The Consultant and all Sub-consultants shall comply with the provisions of Section 1776 of the California labor Code, regarding payroll records. Compliance with said Section 1776 shall be the Consultants responsibility.

The Consultant shall comply with the provisions of labor Code Section 1775.

The Consultant may pay compensation to workers in excess of the prevailing wage rate as determined above, however, such payments shall not be the basis for any claim for additional compensation to the Consultant by the County.

The submittal of certified payroll records from the Consultant will be required when they are needed to verify that the Consultant is in compliance with the State Labor Code. The payroll records shall be on a form and at a frequency as required by the County Public Works Director and the State Labor Code. Failure to provide the records when requested will result in the applicable penalties being levied against the Contractor to effectuate strict compliance.

23. **Compensation:** Consultant will be compensated on a time and materials basis, based on the rates for specific tests as specified in the approved Consultant's Cost Proposal. Billable time begins at the project site and no travel time will be reimbursed to the Consultant. The specified rates shall include direct salary costs, employee benefits, and overhead.

If the project fails any tests or inspections, retests or reinspections may be required. Retests and reinspections will be billed at the same rates as described above. Retests shall be marked on reports and invoices to help facilitate back charging to the contractor, if allowed by the project contract.

24. **Invoicing & Payment:** The Consultant shall submit detailed invoices to the County Project Manager/Inspector on a monthly basis. Billings shall include a spreadsheet style listing showing project name, test performed, date performed, personnel or technician performing said test, County Project Manager/Inspector ordering the test, cost per unit and miles and mileage reimbursement. The spreadsheet shall reflect summations of each pertinent category with billing totals, such as  $(\text{cost per test}) \times (\text{Number of Tests}) + (\text{mileage} \times \text{mileage rate}) = \text{cost per deployment for that day}$  with all items totaled at the bottom of the sheet.

In addition, all invoices shall clearly state whether or not the tests billed met the contract time for delivery.

**EXHIBIT 1**

**STANISLAUS COUNTY PUBLIC WORKS QUALITY ASSURANCE  
PROGRAM**



## STANISLAUS COUNTY PUBLIC WORKS QUALITY ASSURANCE PROGRAM

### SCOPE

The Quality Assurance Program is a sampling and testing program to provide assurance that the materials and workmanship incorporated in highway construction projects are in conformance with the contract specifications. The Quality Assurance Program (QAP) outlined herein shall be followed in the performance of all State and Federal aid highway projects which are not on the National Highway System.

### DEFINITIONS

**Acceptance Test** - The procedure to be used to determine the quality and acceptability of materials and workmanship incorporated into the project. Acceptance testing may be by visual inspection, certificate of compliance, or laboratory testing according to the plans and specifications, this QAP, or accepted industry standards. Both Caltrans Test Methods and the American Society for Testing and Materials (ASTM) test methods are acceptable.

**Project Inspector** - The county representative assigned to the project for the purpose of inspecting field work, and coordinating the sampling and testing of materials to verify compliance to the plans and specifications.

**Resident Engineer** - The county representative, licensed as a civil engineer in the State of California, that is responsible for the overall administration of the project to assure compliance to the plans and specifications.

**Material Testing Agency** - The qualified licensed commercial firm, that regularly performs material testing as a business, hired by Stanislaus County to do the field sampling and laboratory testing. All work performed by this firm shall be under the direction of a qualified licensed Civil Engineer in the State of California who is employed on a full time basis by the material testing agency.

### QAP PROCEDURAL REQUIREMENTS

#### 1. ACCEPTANCE TESTING

The plans and specifications will determine the method of acceptance for each individual project. The materials that need to be inspected at the job site shall be inspected by the project inspector. When the project inspector determines that field sampling and testing is necessary per the specifications or required by recognized industry standards, the project inspector shall coordinate the required acceptance tests (AT) with the material testing agency (MTA). The MTA shall report AT results directly to the project inspector on an expedited basis, such as by fax or telephone, to be followed by a written report.

When sampling products such as portland cement concrete, asphalt concrete, and other such materials, the time of such sampling shall be varied with respect to time of day insofar as possible, in order to avoid a predictable sampling routine.





## **2. TESTING OF MANUFACTURED MATERIALS**

Certificates of compliance will usually be accepted for materials listed in Exhibit 16-T of the Caltrans Local Assistance Procedures Manual. In general, Stanislaus County will accept certificates of compliance from the manufacturer of products in which the industry has demonstrated a high degree of reliability in meeting specifications. The resident engineer or the project inspector will designate on the approved submittal sheet when sampling, inspection, and/or testing is needed.

## **3. FREQUENCY OF TESTING**

The frequency of sampling and testing shall be conducted in accordance with the plans and specifications. If not so specified, sampling and testing shall be as indicated in Exhibit 16-R, Frequency Tables, of the Caltrans Local Assistance Procedures Manual.

## **4. TEST FAILURES**

Whenever failures occur, sufficient additional acceptance tests should be taken to isolate the affected work. A description of corrective measures taken and results of any additional tests shall be included in the project records.

## **5. RECORD OF TEST RESULTS**

The project inspector shall maintain a material and testing "Summary Log" for each material requiring multiple sampling and testing as defined in the specifications or frequency table. The Summary Log shall include appropriate data such as station location, depth of test sample, approximate quantity of material represented by the test sample, test result, and tester. Failing test results shall be cross referenced to subsequent retesting on the Summary Log. All material records of samples and tests, material releases and certificates of compliance for a given project shall be incorporated into the resident engineer's project file.

## **6. INDEPENDENT ASSURANCE SAMPLING AND TESTING**

The material testing agency (MTA) shall have a quality assurance program to verify that acceptance testing is being performed correctly with properly calibrated equipment in good working order. The MTA shall participate in one or all of the following; the AASHTO Materials Reference Laboratory (AMRL); the Cement and Concrete Reference Laboratory (CCRL) inspection programs; the Caltrans Reference Sample Program.

July 31, 2007

**MATT MACHADO, PE**  
Director of Public Works

**EXHIBIT B**

**CONSULTANT'S RESPONSE TO COUNTY'S REQUEST FOR PROPOSAL**

August 26 - 2:00



June 26, 2008

Mr. Chris Brady, Construction Division Manager  
Stanislaus County Department of Public Works  
Construction Management Division  
1716 Morgan Road  
Modesto, California 95358

**CORPORATE OFFICE**  
3251 Beacon Boulevard, Suite 300  
West Sacramento, CA 95691  
916.372.1434 phone  
916.372.2565 fax

**ROCKLIN OFFICE**  
500 Menlo Drive, Suite 100  
Rocklin, CA 95765  
916.435.9722 phone  
916.435.9822 fax

**STOCKTON OFFICE**  
3410 West Hammer Lane, Suite F  
Stockton, CA 95219  
209.234.7722 phone  
209.234.7727 fax

*Proposal for Materials Testing and Inspection*

**STANISLAUS COUNTY**  
Stanislaus County, California

Wallace-Kuhl & Associates, Inc. (WKA) is pleased to present Stanislaus County with this Proposal for Materials Testing and Inspection Services. WKA is one of the most experienced Earthwork and Materials Testing firms providing services in the Stockton area. Additionally WKA is qualified to and experienced in performing geotechnical engineering, geologic engineering and environmental studies in the region. Our Stockton office currently has four full time earthwork technicians and ten full time materials technicians; additional staff can be pulled from our technicians in our West Sacramento, Rocklin and Reno offices on an as-needed basis.

WKA encourages our technicians to advance their qualifications through in-house training and generous support for seminars and certification testing. We are in compliance with the requirements of ASTM E329, Standard Practice for Use in the Evaluation of Testing and Inspection Agencies as Used in Construction, ASTM D3740, Standard Practice for Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction, and AASHTO R18, Establishing and Implementing a Quality System for Construction Materials Testing Laboratories.

Our Stockton laboratory is on the Laboratory Evaluation and Approval (LEA No. 227) list of the Division of the State Architect (DSA) and approved for testing on school projects. We have performed both lab and field testing on numerous projects under DSA jurisdiction, and are currently working on new school construction, modernization projects and portable classroom projects for several school districts. Our laboratory is regularly inspected by the Cement and Concrete Reference Laboratory (CCRL) and accredited by the American Association of State Highway and Transportation Officials (AASHTO) for concrete and aggregate testing. WKA participates in the Reference Sample program administered by AASHTO for soils, concrete,

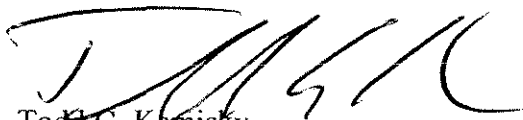
aggregates, and asphalt concrete. We are approved by Caltrans for testing on state highway projects and participate in the Caltrans Reference Sample Program (CRSP). WKA is approved by the Office of Statewide Health Planning and Development (OSHPD) for testing on hospital projects. WKA is also accredited with the Army Corp of Engineers. More important for you, we have an excellent record of client satisfaction, earned by consistently providing timely, accurate testing and knowledgeable consulting services.

I will be acting as the project coordinator for all projects within Stanislaus County, and will provide oversight of all construction testing for projects within the county. Mr. Karlton Windhorst, Regional Manager, will supervise materials testing and Mr. Ken Fritz, Earthwork Services Area Manager, will supervise earthwork testing. Resumes of the key Stockton staff are included in enclosed Quality Manual.

In summary, Wallace-Kuhl & Associates is one of the most experienced consultants providing Earthwork Observation and Testing and Materials Inspection in Stockton and the surrounding San Joaquin Valley region, and has the most capable staff to apply that knowledge to the benefit of Stanislaus County.

We would be happy to provide more information if you so desire. Please contact me if you have any questions regarding the information presented in this Proposal for Materials Testing and Inspection Services packet.

Wallace-Kuhl & Associates, Inc.



Todd G. Kamisky

Senior Engineer

Attachment: RFP Worksheet for Testing and Inspection Services  
Schedule of Fees (*August 2006 DWP, EPW and E1PW*)  
Laboratory Certifications  
Quality System Manual  
Statement of Qualifications Package



## RFP WORKSHEET FOR TESTING & INSPECTION SERVICES

Testing & Inspection services may include, but not be limited to the following items:

TEST NO.	TESTING / INSPECTION SERVICE DESCRIPTION	PRICE PER TEST (\$)	TURN AROUND TIME (DAYS)
1	HOURLY RATE FOR SOIL TECHNICIAN CALTRANS I.A. CERTIFIED WITH NUCLEAR DENSITY GAUGE.	\$102/per hr.	1
2	HOURLY RATE FOR A.C.I. FIELD TESTING TECHNICIAN - GRADE 1	\$85/per hr.	1
3	HOURLY RATE FOR ASPHALT TECHNICIAN CALTRANS I.A. CERTIFIED	\$102/per hr.	1
4	HOURLY RATE FOR I.C.B.O./A.W.S. SPECIAL INSPECTOR (CONCRETE/MASONRY/WELDING)	\$85/per hr.	1
5	FIELD COMPACTION TESTS USING CALIFORNIA 231 TEST METHOD (NUCLEAR GAGE TESTING WITH MINIMUM OF 3 NUCLEAR SHOTS PER TEST INCLUDING MOISTURE - ROAD WORK)	\$102/per hr.	1
6	LABORATORY COMPACTION TEST USING CALIFORNIA 216 TEST METHOD (PART II MAX WET DENSITY & PERCENT RELATIVE COMPACTION)	\$240/ea.	1
7	AGGREGATE TESTING USING CALIFORNIA 202 METHOD OF TESTS FOR SIEVE ANALYSIS OF FINE AND COURSE AGGREGATES.	\$100/ea.	1
8	AGGREGATE TESTING USING CALIFORNIA 205 METHOD FOR DETERMINING PERCENTAGE OF CRUSHED PARTICLES.	\$115/ea.	3
9	SAND EQUIVALENT USING CALIFORNIA 217 TEST METHOD.	\$125/ea.	3
10	BULK SPECIFIC GRAVITY & DENSITY OF BITUMINOUS MIXTURES USING CALIFORNIA 308 TEST METHOD.	\$50/ea.	1
11	DETERMINATION OF ASPHALT BINDER CONTENT OF BITUMINOUS PAVING MIXTURES BY THE IGNITION METHOD USING CALIFORNIA 382 TEST METHOD.	\$230/ea.	1
12	RESISTANCE "R" VALUE OF TREATED AND UNTREATED BASES, SUBBASES, AND BASEMENT SOILS BY THE STABILOMETER TEST USING CALIFORNIA 301 TEST METHOD.	\$290/ea.	3
13	GRAB BAG SOIL SAMPLING PICKUP (UP TO 75 POUNDS) WITHIN STANISLAUS COUNTY - PER SITE (EACH).	\$102/per hr.	1
14	COMPRESSIVE STRENGTH OF MOLDED CONCRETE CYLINDERS USING CALIFORNIA 521 TEST METHOD.	\$27/ea.	7 & 28
15	ASTM D6938-08, "STANDARD TEST METHOD FOR IN-PLACE DENSITY & WATER CONTENT OF SOIL & SOIL-AGGREGATE BY NUCLEAR METHODS".	\$102/per hr.	1

**RFP WORKSHEET FOR TESTING & INSPECTION SERVICES  
(continued)**

Testing & Inspection services may include, but not be limited to the following items:

TEST NO.	TESTING / INSPECTION SERVICE DESCRIPTION	PRICE PER TEST (\$)	TURN AROUND TIME (DAYS)
16	ASTM D1557-07, "STANDARD TEST METHODS FOR LABORATORY COMPACTION CHARACTERISTICS OF SOIL USING MODIFIED EFFORT"	\$230/ea.	1
17	SAMPLING FRESH CONCRETE USING CALIFORNIA 539 TEST METHOD; AND MAKING HANDLING, AND STORING CONCRETE COMPRESSIVE TEST SPECIMENS IN THE FIELD USING CALIFORNIA 540 TEST METHOD.	\$85/per hr.	1
18	CONCRETE CYLINDER PICKUP PER SET OF CYLINDERS WITHIN STANISLAUS COUNTY (EACH)	\$85/per hr.	1
19	CALTRANS TEST METHOD 366, "STABILOMETER VALUE"	\$140/pt.	2
20	CALTRANS TEST METHOD 367, "OPTIMUM BITUMEN CONTENT"	N/A	N/A
21	CALTRANS TEST METHOD 370, "MOISTURE CONTENT OF BITUMINOUS MIXTURES OR GRADED MINERALS AGGREGATES USING MICROWAVE OVENS"	\$100/ea.	1
22	CALTRANS TEST 375, "RELATIVE COMPACTION OF ASPHALT CONCRETE IN PLACE"	\$90/pt.	1
23	CALTRANS TEST 202, "SIEVE ANALYSIS OF FINE AND COARSE AGGREGATES"	\$165/ea.	2
24	ASTM D4318, "PLASTICITY INDEX"	\$142/ea.	2
25	ASTM D422, "SIEVE ANALYSIS OF SOIL ASTM D422"	\$155/ea.	2
26	CALTRANS TEST METHOD 382, "ASPHALT DETERMINATION OF ASPHALT BINDER CONTENT OF BITUMINOUS PAVING MIXTURES BY THE IGNITION METHOD"	\$230/ea.	1
27	CHEMICAL TESTING OF TREATED AND UNTREATED SOILS AND AGGREGATE BASES, ASTM TEST METHOD D. 2170, "KINEMATIC VISCOSITY", ASTM TEST METHOD 2171, "ABSOLUTE VISCOSITY"; AND ASTM D5, "PENETRATION"	N/A	N/A
28	PERCOLATION TESTING TO DETERMINE SOIL'S PERCOLATION RATE. (FOR TRENCH AND BED PERCOLATION)	\$100/per hr.	1

**EXHIBIT C**

**CONSULTANTS FEE SCHEDULE**

# SCHEDULE OF FEES DPW

## EARTHWORK TESTING

AUGUST 2006

Administrative Assistant		\$ 60.00/hr.
Soil Tester		\$ 102.00/hr.
Field Supervisor		\$ 102.00/hr.
Project Manager		\$ 110.00/hr.
Staff Engineer		\$ 110.00/hr.
Senior Staff Engineer or Geologist		\$ 115.00/hr.
Project Engineer		\$ 125.00/hr.
Senior Project Engineer		\$ 135.00/hr.
Senior Engineer		\$ 145.00/hr.
Principal Engineer		\$ 175.00/hr.
Vehicle Charge (Subject to periodic adjustment due to fuel cost)		\$ 0.75/mile
Subsistence Lodging		\$ 55.00/day Cost
Premium Charges		
Overtime (Saturdays and over 8 hours in one day)	add	\$ 38.00/hr.
Sunday and Holidays	add	\$ 47.00/hr.
Compaction Characteristics: Laboratory moisture/density relationship		
	ASTM D 698	
	Methods A	\$ 190.00 each
	Methods B, C & D	\$ 200.00 each
	ASTM D 1557	
	Method A	\$ 230.00 each
	Method B, C & D	\$ 240.00 each
	CT 216	\$ 240.00 each

### NOTES:

- 1) A two hour minimum charge will apply to field technician services with the following exceptions:
  - a) Single trip pickup and delivery services, where a one hour minimum will apply.
  - b) Saturday, Sunday and holidays, where a four hour minimum charge will apply.
- 2) A \$20.00 per hour shift differential surcharge will be added to the hourly rate of personnel involved in scheduled testing work between the hours of 6 P.M. and 5 A.M., as well as a four hour minimum.





# SCHEDULE OF FEES *EPW*

## MATERIALS TESTING AND SPECIAL INSPECTION AUGUST 2006

Administrative Assistant	\$ 60.00/hr.
Materials Tester	\$ 85.00/hr.
Steel/Welding Inspector	\$ 95.00/hr.
Field Supervisor	\$ 95.00/hr.
ASNT Level III Technician	\$ 110.00/hr.
Project Manager	\$ 110.00/hr.
Staff Engineer	\$ 110.00/hr.
Project Engineer	\$ 125.00/hr.
Senior Project Engineer	\$ 135.00/hr.
Senior Engineer	\$ 145.00/hr.
Principal Engineer	\$ 175.00/hr.
Vehicle Charge (Subject to periodic adjustment due to fuel cost)	\$ 0.75/mile
Subsistence Lodging	\$ 55.00/day Cost
Premium charges	
Overtime (Saturdays and over 8 hours in one day)	add \$ 38.00/hr.
Sunday and Holidays	add \$ 47.00/hr.
Equipment rental, freight, special materials	Cost + 20%
Outside services	Cost + 20%

### NOTES:

- 1) A two hour minimum charge will apply to field technician services with the following exceptions:
  - a) Single trip pickup and delivery services, where a one hour minimum will apply.
  - b) Saturday, Sunday and holidays, where a four hour minimum charge will apply.
- 2) A \$20.00 per hour shift differential surcharge will be added to the hourly rate of personnel involved in scheduled testing work between the hours of 6 P.M. and 5 A.M., as well as a four hour minimum.



SCHEDULE OF FEES *EPW*  
 MATERIALS TESTING AND OBSERVATION  
 AUGUST, 2006

CONCRETE TESTING

		Quotation Upon Request
Concrete Mix Design or Review		
Field Observation, Batch Plant Observation or Casting of Concrete Test Specimens	ASTM C192	\$ 85.00/hr.
Compression Tests	ASTM C39	
6" x 12" concrete cylinder		\$ 27.00 each
6" x 12" concrete cylinder handled & cured, NOT tested		\$ 24.00 each
3" x 6" lightweight insulating concrete cylinder		\$ 33.00 each
Concrete cores, including trim	ASTM C42/C39	\$ 70.00 each
Shotcrete Cores	ASTM C42/C39	\$ 50.00 each
High Strength Grout Cubes	ASTM C109	\$ 32.00 each
Flexural Strength, concrete beams	ASTM C78,C293	\$ 90.00 each
Unit Weight of Hardened Concrete	ASTM C567, C495	\$ 50.00 each
Splitting Tensile Tests	ASTM C496	\$ 65.00 each
Laboratory Drying Shrinkage Test (set of 3)	ASTM C157	\$ 475.00/set
Concrete Cylinder Molds (6" x 12")		\$ 4.00 each
Concrete Anchor Proof Load Testing		*
R-Meter (Pachometer) Testing		*
Schmidt Hammer Testing (Rebound number)	ASTM C805	*
Floor Flatness (F-number testing)	ASTM E1155	*
Windsor Probe Testing		\$ 95.00/hr.
Windsor Probe Test Shot		\$ 27.00/shot
Concrete Coring	ASTM C42	*
Floor Slab Moisture Emission Test	ASTM F1869	**
* Technician(s) time plus \$30/hr. premium for equipment use		
** Technician(s) time plus \$30 per calcium chloride test kit		**



SCHEDULE OF FEES EPW  
MATERIALS TESTING AND SPECIAL INSPECTION  
AUGUST, 2006

STEEL TESTING

Steel/Welding Inspector – rebar placement and welding inspection		\$ 95.00/hr.
High Strength Bolt Assembly Laboratory Hardness Testing. (Bolt, Nut, Washer)	Less than 5	\$ 45.00 each
	More than 5	\$ 40.00 each
Ultrasonic Testing		\$ 95.00/hr.
Tensile Test		
Up to 3/4"	ASTM A36	\$ 65.00 each
Sizes Larger than 3/4"		\$ 70.00 each
Machining of Test Specimens		cost plus 20%
Fireproofing Unit Weight	ASTM E605	\$ 60.00 each

REINFORCING STEEL TESTING

Tensile Tests		
Up to Size No. 7	ASTM A370	\$ 70.00 each
From No. 8 through 14	ASTM A370	\$ 95.00 each



SCHEDULE OF FEES *EPW*  
 MATERIALS TESTING AND SPECIAL INSPECTION  
 AUGUST, 2006

MASONRY TESTING

Materials Tester – masonry inspection and testing (DSA certified when required)		\$ 85.00/hr.
Compression Tests		
Grout	UBC 21-18	\$ 35.00 each
Mortar	UBC 21-16	\$ 30.00 each
Concrete Masonry Units	ASTM C140	\$ 65.00 each
Brick	ASTM C67	\$ 55.00 each
Composite Masonry Prism	UBC 21-17	\$ 90.00 each
Absorption and Moisture Content of Concrete Masonry Unit	ASTM C140	\$ 70.00 each
Linear Shrinkage, Concrete Masonry Unit (Set of 3)	ASTM C426	\$ 420.00 set
Modulus of Rupture, Brick	ASTM C67	\$ 65.00 each
Absorption with Coefficient, Brick	ASTM C67	\$ 75.00 each
Mortar Cylinder Mold		\$ 4.00 each
Masonry Coring		*
Masonry Core Compression tests	2004 CBC Title 24, Section 2105A	\$ 70.00 each
Masonry Core Shear Strength	2004 CBC Title 24, Section 2105A	\$ 80.00 each
Brick Veneer Shear Strength	2004 CBC Title 24, Section 1403	\$ 120.00 each
In-Place Masonry Shear Testing		*
Rental Equipment & Labor		Cost + 20%

\* Technician(s) time plus \$30/hr premium for equipment use.



# SCHEDULE OF FEES E1PW

## MATERIALS LABORATORY TESTING

AUGUST 2006

### AGGREGATE TESTING

Sieve Analysis		
Coarse and Fine, including wash	ASTM C136	\$ 100.00 each
Wet Sieve (coarse or fine)	CT 202	\$ 100.00 each
Percent finer than No. 200 sieve	ASTM C117	\$ 90.00 each
Specific Gravity and absorption, fine or coarse	ASTM C127, C128	\$ 120.00 each
Aggregate Unit Weight	ASTM C29	\$ 50.00 each
Sand Equivalent (average of 3)	CT 217	\$ 125.00 each
Sand Equivalent, one point		\$ 95.00 each
Durability Index, coarse or fine	CT 229	\$ 155.00 each
Cleanness Value	CT 227	\$ 160.00 each
Organic Impurities in fine aggregates	ASTM C40	\$ 55.00 each
Flat and Elongated Particles in aggregate	CT119, 120	\$ 115.00/size
Crushed Particles	CT 205	\$ 115.00/size
Clay Lumps and Friable Particles	ASTM C142	\$ 115.00/size
Soundness, Sodium Sulfate	ASTM C88 CT 214	\$ 115.00/size
Los Angeles Rattler Test (500 revs)	ASTM C131	\$ 210.00 each
Mortar Making Properties of Sand	ASTM C87	\$ 405.00 each
Lightweight Pieces in Aggregate	ASTM C123	\$ 130.00 each



SCHEDULE OF FEES E1  
 MATERIALS LABORATORY TESTING  
 AUGUST, 2006

ASPHALT CONCRETE

Bitumen Content (ignition oven)	ASTM D6307 CT 382	\$ 230.00 each
Sieve Analysis of AC aggregate (coarse and fine)	ASTM D5444 CT 202	\$ 165.00 each
Unit Weight of Cores	ASTM D2726, D1188 CT 308	\$ 50.00 each
Asphalt Concrete Coring		*
Marshall Stability and Flow	ASTM D1559	\$ 140.00/pt.
Stabilometer Value	CT 366	\$ 140.00/pt.
Marshall Compacted Unit Weight	ASTM D1559, D2726	\$ 90.00/pt.
Hveem Compacted Unit Weight	ASTM D1560, D2726 CT 304, 375	\$ 90.00/pt.
Moisture Vapor Susceptibility	CT 307	\$ 305.00 each
Retained Stability	ASTM D1075	\$ 170.00/pt.
Theoretical Maximum Density	ASTM D2041	\$ 145.00 each
Asphalt Concrete Mix Design		Quotation upon request

\* Technician(s) time plus \$30/hr premium for equipment use.



**EXHIBIT D**  
**PROJECT SCHEDULE**

**Project schedule is not applicable to this contract.**