

**AMENDMENT NO. 1
TO AGREEMENT FOR PROFESSIONAL SERVICES
GeoMat Testing Laboratories, Inc.**

**Geotechnical and Materials Testing
Third Street Storm Drain Stage II, Project No. 4296**

This Amendment No. 1 to Agreement for Professional Services ("Amendment No. 1") is made and entered into as of January 8, 2019, by and between the City of Lake Elsinore, a municipal corporation ("City"), and GeoMat Testing Laboratories, Inc., a California corporation ("Consultant").

RECITALS

A. The City and Consultant have entered into that certain Agreement for Professional Services dated as of June 12, 2018, (the "Original Agreement"). Except as otherwise defined herein, all capitalized terms used herein shall have the meanings set forth for such terms in the Original Agreement.

B. The Original Agreement provided for compensation to Consultant in an amount \$78,520.

C. The parties now desire to modify the scope of services and increase the payment for such services as set forth in this Amendment No 1.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, City and Consultant agree as follows:

1. Section 1, Scope of Services, of the Original Agreement is hereby amended to add the following:

Consultant shall also perform the services described in Consultant's December 12, 2018, Proposal (attached to this Amendment No. 1 as Exhibit A-1). Consultant shall provide such services at the time, place, and in the manner specified in Exhibit A-1, subject to the direction of the City through its staff that it may provide from time to time.

2. Section 3, Compensation, of the Original Agreement is hereby amended to read in its entirety as follows:

Compensation to be paid to Consultant shall be in accordance with the fees set forth in Consultants' Proposal (Exhibit A to the Original Agreement) and Consultant's December 12, 2018, Proposal (Exhibit A-1 to Amendment No. 1).

In no event shall Consultant's compensation related to Exhibit A to the Original Agreement exceed Seventy Eight Thousand Five Hundred Twenty dollars (\$78,520) without additional written authorization from the City.

In no event shall Consultant's compensation related to Exhibit A-1 to Amendment No. 1 exceed Fourteen Thousand Four Hundred dollars (\$14,400) without additional written authorization from the City.

Notwithstanding any provision of Consultant's Proposal and/or Consultant's December 12, 2018 Proposal to the contrary, out of pocket expenses set forth in Exhibit A and Exhibit A-1, respectively, shall be reimbursed at cost without an inflator or administrative charge. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Except for the changes specifically set forth herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed on the respective dates set forth below.

"CITY"

CITY OF LAKE ELSINORE, a municipal corporation

"CONSULTANT"

GeoMat Testing Laboratories, Inc.
, a California corporation

Grant Yates, City Manager

Haytham Nabils, Principal

Date:_____

Date:_____

ATTEST:

Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

Attachments: Exhibit A-1 – Consultant's December 12, 2018 Proposal
Original Agreement

EXHIBIT A-2
CONSULTANT'S PROPOSAL
[ATTACHED]

BUDGET REQUEST COST FOR PROFESSIONAL CONSTRUCTION GEOTECHNICAL
SERVICES 3, . STREET STORM DRAIN

Mil.FARID DOST
PROJECTMANAGER
CITY OF LAKE ELSINORE
ENGINEERING DIVISION
130 SOUTH MAIN STREET
LAKE ELSINORE, CA 92530

PROJECT NO. 18057-01

ITEM	UNIT	QUANTITY	RATE	COST (\$)
PERSONNEL				
Field Technician- Compaction testing, AC Temperature Monitoring	Hr	160	85.00	13800.00
EQUIPMENT				
Nuclear Gage/Mobile Lab	Hr	160	5.00	800.00
TOTAL COST				14400.00

Per your request the above table provided the total extra time requested and unit price per our approved contract

Original Agreement

**AGREEMENT FOR PROFESSIONAL SERVICES
GeoMat Testing Laboratories, Inc.**

***Environmental Package
Third Street Storm Drain Stage II, Project No. 4296***

This Agreement for Professional Services (the "Agreement") is made and entered into as of June 19, 2018, by and between the City of Lake Elsinore, a municipal corporation ("City") and GeoMat Testing Laboratories, Inc., a California Corporation ("Consultant").

RECITALS

A. The City has determined that it requires the following professional services: environmental services and reporting for the Third Street Storm Drain Stage II Project.

B. Consultant has submitted to City a proposal, dated June 13, 2018 attached hereto as Exhibit A ("Consultant's Proposal") and incorporated herein, to provide professional services to City pursuant to the terms of this Agreement.

C. Consultant possesses the skill, experience, ability, background, certification and knowledge to perform the services described in this Agreement on the terms and conditions described herein.

D. City desires to retain Consultant to perform the services as provided herein and Consultant desires to provide such professional services as set forth in this Agreement.

AGREEMENT

1. Scope of Services. Consultant shall perform the services described in Consultant's Proposal (Exhibit A). Consultant shall provide such services at the time, place, and in the manner specified in Consultant's Proposal (Exhibit A), subject to the direction of the City through its staff that it may provide from time to time.

2. Time of Performance.

a. Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the professional services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the professional services contemplated pursuant to this Agreement according to the agreed upon performance schedule in Consultant's Proposal (Exhibit A).

b. Performance Schedule. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the Consultant's Proposal (Exhibit A). When requested by Consultant, extensions to the time period(s) specified may be approved in writing by the City Manager.

c. Term. The term of this Agreement shall commence upon execution of this Agreement and shall continue until the services and related work are completed in accordance with the Consultant's Proposal (Exhibit A).

3. Compensation. Compensation to be paid to Consultant shall be in accordance with the fees set forth in Consultants' Proposal (Exhibit A), which is attached hereto and incorporated herein by reference. In no event shall Consultant's compensation exceed **Twenty Six Thousand Seven Hundred dollars (\$26,700)** without additional written authorization from the City. Notwithstanding any provision of Consultant's Proposal to the contrary, out of pocket expenses set forth in Exhibit A shall be reimbursed at cost without an inflator or administrative charge. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Consultant shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Consultant's bills shall be segregated by project task, if applicable, such that the City receives a separate accounting for work done on each individual task for which Consultant provides services. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Consultant no later than forty-five (45) days after receipt of the monthly invoice by City staff.

5. Suspension or Termination.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of such notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City, pursuant to Section entitled "Method of Payment" herein.

6. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notepad internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request. City acknowledges that any use of such materials in a manner beyond the intended purpose as set forth herein shall be at the sole risk of the City. City further agrees to defend, indemnify and hold harmless Consultant, its officers, officials, agents, employees and volunteers from any claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therein), arising out of the City's use of such materials in a manner beyond the intended purpose as set forth herein.

a. Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require that all subcontractors agree in writing that City is granted a nonexclusive and perpetual license for any Documents & Data the subcontractors prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

b. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs relating to project for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

7. Consultant's Books and Records.

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City

may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

8. Independent Consultant. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent Consultant and shall not act as an agent or employee of the City.

9. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractors of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other federal, state and local laws, codes, ordinances and regulations to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

10. Interests of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

11. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

12. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

13. Licenses. Consultant represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall maintain a City of Lake Elsinore business license.

14. Indemnity. Consultant shall indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the sole negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractors, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

15. Insurance Requirements.

a. Insurance. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, unless modified by the City's Risk Manager, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractors to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. In the event that Consultant is exempt from Worker's Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California, Consultant shall submit to the City a Certificate of Exemption from Workers Compensation Insurance in a form approved by the City Attorney.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Required commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. No endorsement may be attached limiting the coverage.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence. Automobile liability coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

iv. Professional Liability Coverage. Consultant shall maintain professional errors and omissions liability insurance appropriate for Consultant's profession for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's services under this Agreement, whether such services are provided by the Consultant or by its employees, subcontractors, or sub consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single limit per occurrence basis.

b. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this Policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

16. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Lake Elsinore
Attn: City Manager
130 South Main Street
Lake Elsinore, CA 92530

With a copy to: City of Lake Elsinore
Attn: City Clerk
130 South Main Street
Lake Elsinore, CA 92530

If to Consultant: GeoMat Testing Laboratories, Inc.
Attn: Haytham Nabils
9980 Indiana Ave, Ste. 14
Riverside, CA 92503

17. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

18. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

19. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant and the subcontractors listed in Exhibit B. Consultant shall be fully responsible to City for all acts or omissions of any subcontractors. Assignments of any or all

rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement except as provided in Exhibit B without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of those subcontractors. Nothing in this Agreement shall create any contractual relationship between City and any subcontractors nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractors other than as otherwise is required by law.

20. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

21. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

22. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Riverside.

23. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

24. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

25. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party. The City Manager is authorized to enter into an amendment or otherwise take action on behalf of the City to make the following modifications to the Agreement: (a) a name change; (b) grant extensions of time; (c) non-monetary changes in the scope of services; and/or (d) suspend or terminate the Agreement.

26. Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service

with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

27. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractors, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

28. Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Consultant agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). It is agreed by the parties that, in connection with the Work or Services provided pursuant to this Agreement, Consultant shall bear all risks of payment or non-payment of prevailing wages under California law, and Consultant hereby agrees to defend, indemnify, and hold the City, and its officials, officers, employees, agents, and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

29. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

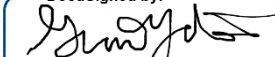
“CITY”

CITY OF LAKE ELSINORE, a municipal corporation

“CONSULTANT”

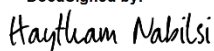
GeoMat Testing Laboratories, Inc., a California Corporation

DocuSigned by:



Grant Yates, City Manager

DocuSigned by:



By: Haytham Nabils

Its: Principal

ATTEST:

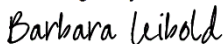
DocuSigned by:



City Clerk

APPROVED AS TO FORM:

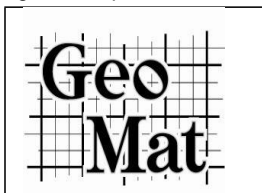
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City Attorney

Attachments: Exhibit A – Consultant's Proposal

EXHIBIT A
CONSULTANT'S PROPOSAL
[ATTACHED]



GeoMat Testing Laboratories, Inc.

Soil Engineering, Environmental Engineering, Materials Testing, Geology

June 13, 2018

Project No. 18057-01
Caltrans Certified, Lab No. 562
City of Los Angeles Certified, Lab No. 10217
AASHTO and ASTM Certified

TO: City of Lake Elsinore
Engineering Division
130 South Main Street
Lake Elsinore, California 92530

ATTENTION: Mr. BRAD FAGRELL

SUBJECT: Response to RFP and Fee for Professional Environmental Package for Lake Elsinore
3rd Street Drain Public Works Project, THIRD STREET STORM DRAIN PROJECT

GeoMat Testing Laboratories, Inc. appreciates the opportunity to provide the City of Lake Elsinore with complete geotechnical and material testing and inspection services per the subject RFP.

We are committed to providing the City of Lake Elsinore with high quality services in a timely and cost efficient manner. As a team member, we will be committed to provide all the resources to perform necessary soil sampling per Caltrans Construction Manual and 2012 Green Book, soil testing, aggregate testing, asphalt mix testing, testing of pipe bedding material, and compaction testing in accordance with the scope of work assigned to us to the highest professional standards and in a manner reasonably satisfactory to the department.

Our firm is fully staffed and carries professional/general liability insurance, auto, and workman compensation insurance. Our certified laboratory and well qualified local professional and technical staff will assure that an exceptional level of service is provided to the project team.

With our vast experience, local presence, and low overhead you can expect quality service at reasonable rate. Our capabilities, project experience, resumes, and references are attached for you review. Mr. Haytham Nabils, P.E. is the project manager and contact at GeoMat Testing Laboratories, Inc.. His contact information is as follows:

Email Haytham@geomatlabs.com
Phone (951) 688-5400 or (951) 534-1618

We look forward to work with you on this important contract. Should you have any questions or need further information, please do not hesitate to call this office.

Submitted for GeoMat Testing Laboratories, Inc.

Haytham Nabils, GE 2375
Principal Engineer

Distribution: [3] Addressee

City of Lake Elsinore

Environmental Package for Lake Elsinore 3rd Street Drain Public Works Project

The project is part of a master drainage facility that will provide flood protection to the “existing Third Street channel watershed and adjacent properties”. It will convey storm water and urban runoff from a flood control basin at the east end of Welch Avenue through reinforced concrete pipe (RCP) that leads west to Conard Ave., southeast along Conard to 3rd Street and southwest along 3rd Street to a reinforced concrete box (RCB) under Collier Avenue after crossing west under the I-15 freeway, a total distance of 1.85 miles or 4,488 feet. However, the current extent of the project is from the lateral connection at Cambern Ave. west to 3rd Street and Collier.

According to Construction Schedule, the actual length of previously undisturbed excavation work is estimated at approximately 3,000 feet. Distance of excavation per day is estimated at 200 – 300 feet.

The project is planned to convey waters that are non-jurisdictional, and the construction for this conveyance will not result in dredged and/or fill material within state or federal jurisdictional areas, as defined in the Habitat Assessment and MSHCP Consistency Analysis conducted by Michael Baker International for this project in 2016.

SCOPE OF WORK AND COSTS

Debra Kinsinger and Laguna Mountain Environmental (LME) and San Diego Natural History Museum (SDNHM) are all Riverside County Certified consultants. Mr. Pignolo of LME is also a member of the Register of Professional Archaeologists (RPA) and Principal Investigator. Tom Deméré, Ph.D., of SDNHM, is a Qualified Principal Investigator for Paleontology. All organizations have current liability insurance and can provide evidence of coverage upon request.

The Mitigation Monitoring and Reporting Plan (MMRP) for the project specifies measures for biology and cultural resources to prevent potentially significant impacts and due to a late change after the proposal request was out to bid, it also includes paleontological resources in areas mapped by the Lake Elsinore General Plan as High Sensitivity. A portion of the area that The City of Lake Elsinore is responsible for is mapped as “high sensitivity”.

Reports are billed on a flat rate basis. Monitoring is costed on a time and materials basis, 4 hours minimum per day, 1 hour increments thereafter. An abbreviated cost estimate is in the table below. The detailed proposals and costs are on following pages.

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COST FOR ENVIRONMENTAL SERVICES 3RD STREET STORM DRAIN

ITEM	UNIT	QUANTITY	RATE	COST (\$)
PERSONNEL-SITE MONITORING				
Paleontology Monitoring	Hr	40	100.00	4,000.00
Archaeological Monitoring	Hr	40	95.00	3,800.00
Native American Monitoring	Hr	40	90.00	3,600.00
Nesting Bird & BUOW Monitoring	Hr	20	90.00	1,800.00
PROJECT MANAGMENT				
Project Management	Hr	20	125.00	2,500.00
FIELD SURVAY				
Preconstruction Nesting Bird & BUOW Surveys	Ea	2	700.00	1,400.00
REPORTS				
One Paleontological Report – Negative Findings report if there is monitoring	Ea	1	1,500.00	1,500.00
One Paleontological Report – Positive Findings report if there is monitoring	Ea	1	2,500.00	2,500.00
Archaeological Report	Ea	2	1300.00	2,600.00
Preconstruction & Final Nesting Bird & Burrowing Owl	Ea	3	1000.00	3,000.00
TOTAL COST				26,700.00

Cost is an estimated based on plans and specifications. We are on time and materials bases; line items will be billed accordingly. Rates are based on prevailing wages for the southern California DIR requirements.

CULTURAL RESOURCE SCOPE OF WORK –

The scope of work has been divided into four tasks. The first task includes preparing a monitoring plan as directed by the mitigation measures established for this project. Task 2 includes cultural resource sensitivity training. Task 3 is the main task that includes archaeological and Native American monitoring. Task 4 consists of the preparation of final cultural resource monitoring reports. Each task is discussed in greater detail below.

Task 1 Archaeological Monitoring Plan

An archaeological monitoring plan will be prepared to establish the scope and scheduling of the archaeological and Native American monitoring. It will be prepared in consultation with the monitoring Tribe(s), and the City. The previous research will be reviewed to determine the locations and nature of any previously recorded cultural resources in the vicinity of the project area and the potential for buried resources. The CRMP will address the details, timing, and responsibility of all archaeological and cultural activities that will occur on the project site. Details in the Plan shall include

- a. Project excavation and development schedule.
- b. The coordination of a monitoring schedule as agreed upon by the Monitoring Tribe(s), the Project Archaeologist, and the City of Lake Elsinore; and
- c. The protocols and stipulations that the City, Monitoring Tribe(s) and Project Archaeologist will follow in the event of inadvertent cultural resources discoveries, including newly discovered cultural resources

Task 2 -Sensitivity Training

The Project Archaeologist and the Monitoring Tribe(s) shall conduct sensitivity training for all construction personnel. Construction personnel shall be informed of the types of archaeological resources that may be encountered, and of the proper procedures to be enacted in the event of an inadvertent discovery of archaeological resources or human remains. The City's construction manager shall ensure that construction personnel are made available for and attend the training and shall retain documentation demonstrating attendance.

Task 3 Archaeological and Native American Monitoring

Laguna Mountain shall be responsible for monitoring construction activities related to the grading operations carried out in the project area as follows:

1. During the original cutting of previously undisturbed deposits, the Project Archaeologist and Native American Monitor shall be onsite. Estimated at fifteen (15) 4-6-hour days for archaeological and Native American monitoring and monitoring of excavation is estimated; unused hours will not be billed. Project monitoring assumes a 4-hour minimum and no overtime hours, with monitoring occurring only during excavation and not during setup and backfilling. The presumed length is 3,000 feet at approximately 200 feet per day.
2. In accordance with the agreement the Project archaeologist and designated tribal monitor(s) assigned to the project by the Luiseño Tribe(s) shall have the authority to stop and redirect excavation in order to evaluate the significance of any archaeological resources discovered in the project area.
3. All artifacts discovered at the project site shall be inventoried and analyzed by the Project Archaeologist and Native American Monitor(s). If any artifacts of Native American origin are discovered, all activities in the immediate vicinity of the find (within a 50-foot radius) shall stop. The Project Archaeologist and Native American Monitor(s) shall analyze the Native American artifacts for identification as everyday life and/or religious or sacred items, cultural affiliation, temporal placement, and function, as deemed possible. The significance of Native American resources shall be evaluated in accordance with the provisions of CEQA and shall consider the religious beliefs, customs, and practices of the Pechanga and Soboba bands of Luiseño Tribe(s). All items found in association with Native American human remains shall be considered grave goods or sacred in origin and subject to special handling.

Task 4 Reporting

Upon completion of the monitoring phase, Laguna Mountain will prepare and submit a report within (60) days of completion of the project. The report will follow ARMR guidelines and City of Lake Elsinore requirements. It shall include at a minimum: a discussion of monitoring methods and techniques used along with the results of the monitoring program, including any artifacts. The report will include Department of Parks and Recreation Primary and Archaeological Site forms, if applicable. The report will also include final disposition of the resources and any additional recommendations. A final copy shall be submitted to the City of Lake Elsinore, the Eastern Information Center, and the monitoring Tribe(s). This scope of services assumes that no cultural resources are identified during monitoring and a negative monitoring report will be prepared.

A positive finding would involve time and materials billing for significance testing and curation. A positive finding report would incorporate these findings and the cost would be part of a follow-on contract or billed on a time and materials basis under the existing contract.

PALEONTOLOGY SCOPE OF WORK – Conducted by San Diego Natural History Museum

Task 1 Monitoring

The Lake Elsinore General Plan specifies that paleontological monitoring is required where the maps in the General Plan indicate a High Sensitivity for paleontological resources. Approximately 800 to 1000 feet of the project between Station 41 and 52 is in that High Sensitivity area. However, the depth of excavation is only between 10 and 12 feet below the surface. A preliminary review of geotechnical reports by the paleontology Principal Investigator may indicate that no monitoring is recommended under these borderline depth conditions. If the need for monitoring is indicated, then:

1. During the original cutting of previously undisturbed deposits, the Paleontological Monitor shall be onsite. An estimate 4 to 6 hours will be needed and unused hours will not be billed. Project monitoring assumes a 4-hour minimum and no overtime hours, with monitoring occurring only during excavation and not during setup and backfilling.
2. In accordance with the agreement the Project Paleontologist shall have the authority to stop and redirect excavation in order to evaluate the significance of any paleontological resources discovered in the project area.
3. If there are significant paleontological specimens discovered at the project site, they shall be prepared and analyzed by the Project Paleontologist and their disposition shall be determined in the report.

Task 2 Negative Finding Report

- Document review - A review of published and unpublished paleontological and geological reports and government datasets dealing with the project area will be conducted, as well as a review of project-related construction plans and designs.
- Records search - A search of paleontological collecting records will be conducted at the San Diego Natural History Museum and the Western Science Center to determine the extent of known fossil sites on and adjacent to the project site.
- Assessment of paleontological resource sensitivity and potential impacts - An evaluation of the paleontological resource significance/sensitivity of individual geologic formations exposed on the project site will be conducted in concert with an evaluation of the potential for project construction to impact significant paleontological resources.
- Preparation of technical report - A paleontological resources assessment report will be prepared that will summarize the results of the document review, records search and monitoring.

Positive Finding Report

In the event that a significant paleontological resources are recovered there would also be associated costs for fossil preparation and curation into a recognized repository, such as the Western Science Center in Hemet, CA. However, a positive finding is likely to consist of marine shells and if the findings are not significant, curation may not be required. If a positive finding report is needed, the cost of the report would depend on the extent of fossil discoveries that need to be documented. The cost for fossil preparation and curation would be billed on a time and materials basis.

BIOLOGY SCOPE OF WORK –

The scope of work has been divided into six tasks.

1. 30-day pre-construction burrowing owl take avoidance survey
2. 30-day burrowing owl report
3. Nesting bird preconstruction survey
4. Nesting bird report
5. Nesting bird weekly monitoring through August 31, 2018 (includes burrowing owls and other birds of prey)
6. Final nesting bird and bird of prey summary monitoring report

Passive relocation of burrowing owls, if present, are not part of this contract proposal. If burrowing owls are present, a 500-foot construction buffer would be maintained until the young have fledged. If necessary, burrows would be closed and burrowing owls would be passively relocated during the non-breeding season after August 31, 2018 and before February 1, 2019, under a separate contract.

Task 1 30-day Pre-Construction Burrowing Owl Take Avoidance Survey

Habitat Assessment and MSHCP Consistency Analysis conducted by Michael Baker International for this project in 2016, found suitable burrowing owl habitat on site but did not find any active burrowing owl (BUOW) dens, BUOW sign, or dens of the size and characteristic, that would be suitable for BUOW use. Burrows within the 500-foot buffer were California ground squirrel burrows not larger than 4 inches in diameter. Therefore, BUOW are not known to be present.

The take avoidance survey will revisit the habitat within a 500-foot buffer around the project site no more than 30 days prior to project initiation with ground or vegetation disturbing activity and no less than 14 days. Our Riverside County Certified biologist, qualified to conduct burrowing owl surveys, will walk transects set 33 feet on the center and mark any burrows that are greater than 4 inches in diameter with GPS. Those burrows will be monitored during weekly nesting bird surveys with binoculars or by approaching the site of the potential burrow as deemed necessary by the qualified biologist.

Active burrows will be mapped with GPS and located on the weekly and final report map and a standard 30-day preconstruction survey data sheet will be completed for each active burrow. Active burrows will be identified by the presence of pellets, white wash, track, or characteristic burrow entrances “decorated” with shiny bones, trash or pellets. Our certified Biologist will predict fledge dates for any occupied burrows.

Task 2 30-Day Preconstruction Burrowing Owl Survey Report

We will submit a report to the City of Lake Elsinore Planning Department and to the California Department of Fish and Wildlife (CDFW) with the results of the survey within one week of survey completion. The report will confirm the findings, including a GIS map, photos of the active dens, and occupants (using telephoto lens) and predicted fledge date. If active burrows have been located, the qualified biologist will set up a 500-foot buffer, and/or confer with the CDFW on measures to mitigate against disturbance to the active den and document recommendations in the report. The report will give clearance to work along with any necessary mitigation measures.

Task 3 Nesting bird one week preconstruction survey

Our Certified Biologist will conduct a pre-construction nesting survey within one week advance notice of plans to initiate ground or vegetation disturbing project activities. We will locate all active nests on site with GPS, and predict a fledge dates. We will flag the buffer area for the nesting birds or assist with other mitigation plans as determined by the outcome of the reports.

Task 4 Nesting Bird Report

If the finding for nesting birds within the 300-foot survey area buffer is negative, We will prepare a report with a recommendation to proceed with on-site work and weekly monitoring for new nests to be submitted to the City of Lake Elsinore Planning Department.

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If the pre-construction survey finding is positive, We will prepare a letter report or mitigation plan to avoid significant impacts to nesting birds to City of Lake Elsinore Planning Department.

Examples of mitigation measures might be to use a noise limiting air compressor, avoid working within a 300-foot measured buffer around a nesting bird or provide an on-site construction monitor.

Reports will include GIS maps with nest location, the nesting bird field data sheet, site and nest photographs, and a mitigation plan.

Task 5 Nesting Bird / Bird Of Prey Weekly Monitoring

The nesting bird monitor will visit the site once per week to survey and map new nests, maintain existing nest buffers and report on the status of existing mapped nests. Up to 10 (10) 6-hour days are anticipated for nesting bird monitoring during construction and a minimum of 4 hours per day; unused hours will not be billed. Project monitoring hours include actual travel time to the site and monitoring which may begin at first light possibly before construction begins.

The monitor shall have the authority to stop and redirect work away from the buffer area when a new nest has been located and set up the flagging for the buffer. Buffers for song bird nests that are protected by the Migratory Bird Treaty Act (MBTA) will have 300-foot buffers. Raptors, birds of prey, will have 500-foot buffers. Monitoring will include surveying for burrowing owls at burrows identified as potentially suitable in the 30-day preconstruction burrowing owl survey.

Task 6 Final Nesting Bird And Bird Of Prey Summary Monitoring Report

A final summary report will be prepared within the first 30 days after the end of nesting bird season, August 31st or at the end of work, whichever comes first. The report will be delivered to the City of Lake Elsinore Planning Department and if there are burrowing owls to the CDFW.

The report will include weekly field data sheets, initial report, a summary of mitigation measures taken, results of mitigation, nest fecundity and fledge success for all monitored nests and dens, maps of all nesting locations and photographs.