

AGREEMENT FOR MATERIAL TESTING SERVICES
FOR
THE THREE SB1 REHABILITATION IMPROVEMENT PROJECTS
IN LAKE COUNTY, CA

This Agreement is made and entered into this _____ day of _____, 2019, by and between the County of Lake, hereinafter referred to as "COUNTY", and SHN Consulting Engineers & Geologists, Inc., hereinafter referred to as "CONSULTANT".

WHEREAS, COUNTY has identified a need to construct pavement rehabilitation on Scotts Valley Rd from Lakeport City limits to just west of Mountview Rd, South Main St / Soda Bay Rd intersection and on Soda Bay Rd from Manning Creek Bridge to just east of Big Valley Rd; and

WHEREAS, construction material testing services will be required to construct the pavement rehabilitation, hereinafter referred to as "PROJECT"; and

WHEREAS, CONSULTANT is a licensed professional Civil Engineer in the State of California and is qualified and willing to provide said services;

NOW, THEREFORE, it is mutually agreed by the parties as follows:

I.
SCOPE OF SERVICES

- A. CONSULTANT shall perform the services described in Exhibit "A", attached hereto and incorporated herein by this reference hereinafter called Scope of Work. In the event of a conflict between this Agreement and Exhibit "A", the provisions of this Agreement shall control.
- B. Time of Beginning and Completion of Services: Work on the PROJECT shall begin no later than five (5) calendar days after CONSULTANT's receipt of a COUNTY issued Notice to Proceed. CONSULTANT shall perform services within the times or by the dates provided in Exhibit "A", which by reference is made a part hereof, except that, if applicable, the schedule may be adjusted to reflect any delay in issuance of the Notice to Proceed, or other delay factors not subject to CONSULTANT control.

II.
COUNTY'S RESPONSIBILITIES

The COUNTY's responsibilities will include the payment for the CONSULTANT's services and the time period within which payment must be made. Additionally, the COUNTY may agree to provide certain information, documents, work space, and/or materials.

- A. COUNTY Furnished Data: COUNTY will provide to CONSULTANT all data in COUNTY's possession relating to CONSULTANT's services on the PROJECT.
- B. Access to Facilities and Property: COUNTY will make its facilities accessible to CONSULTANT as required for CONSULTANT's performance of its services. COUNTY will be responsible for all acts of COUNTY's personnel.
- C. Advertisements, Permits, and Access: Unless otherwise agreed to in the Scope of Services, COUNTY will obtain, arrange and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for CONSULTANT's services.
- D. Timely Review: COUNTY will examine CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor,

accountant, auditor, bond and financial advisors, and other consultants as COUNTY deems appropriate; and render in writing decisions required by COUNTY in a timely manner.

- E. Prompt Notice: COUNTY will give prompt written notice to CONSULTANT whenever COUNTY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or of any defect in the work of CONSULTANT.
- F. Environmental Clearances: COUNTY will be responsible for all environmental clearances.
- G. Asbestos or Hazardous Substances and Indemnification: If asbestos or hazardous substances in any form are encountered or suspected, CONSULTANT will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.

If asbestos is suspected, CONSULTANT will if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated.

To the maximum extent permitted by law, COUNTY will indemnify CONSULTANT and CONSULTANT's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation or dispute resolution expenses arising out of or relating to the presence, discharge, release, or escape of hazardous substances, contaminants, or asbestos on, under, or from the PROJECT.

III. CONSULTANT'S REPORT AND/OR MEETINGS

- A. The CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the COUNTY's Project Manager to determine if the CONSULTANT is performing to expectations or is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so remedies can be developed.
- B. The CONSULTANT's Project Manager shall meet with the COUNTY's Project Manager as needed to discuss progress on the project(s).

IV. SUBCONTRACTOR PARTICIPATION

A. **Subcontractors**

1. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Agency's obligation to make payments to the Contractor.
2. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
3. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.
4. Any substitution of subcontractors must be approved in writing by the Agency's Contract Manager in advance of assigning work to a substitute subcontractor.

B. Prompt Payment of Funds Withheld to Subcontractors

1. The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subconsultant performance, or noncompliance by a subcontractor.
2. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

V. PREVAILING WAGE

- A. The CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all federal, state, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

VI. COMPENSATION AND TERMS OF PAYMENT

Payment to CONSULTANT will be made as follows:

- A. **Invoices and Time of Payment:** Monthly invoices will be issued by CONSULTANT for all services performed under this Agreement. Invoices shall reference the project title and include a detailed breakdown of work items and unit costs by task and project site with a summary of all work completed to date and the cost of work remaining. Undisputed invoices shall be paid within 30 days of receipt. Each invoice will include a 5% retention amount.

Invoices shall be mailed to the Contract Manager, Scott Hornung, at the following address:

County of Lake
Public Works Department
255 N. Forbes Street, Room 309
Lakeport, California 95453
Attn: Scott Hornung

Upon satisfactory completion of services enumerated in ARTICLE I herein, the final payment of any balance will be due upon receipt of the final invoice. The final invoice should be submitted within 60-calendar days after completion of the CONSULTANT's work.

- B. **Interest:** Interest at the rate of 1-1/2% per month, or that permitted by law if lesser, will be charged on all past-due amounts starting thirty (30) days after receipt of invoice and required documentation. Payments will first be credited to interest and then to principal.

In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. COUNTY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

If COUNTY fails to make payment in full to CONSULTANT for services within sixty (60) days of the date due for any uncontested billing, CONSULTANT may, after giving seven (7) days written notice to COUNTY, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, CONSULTANT will have no liability to COUNTY for delays or damages caused COUNTY because of such suspension of services.

- C. **Compensation:** The method of payment for this contract will be based on actual cost plus a fixed fee. COUNTY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work set forth in Exhibit "A". Direct Costs for Sub Consultants will be billed as actual costs. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COUNTY's approved overhead rate set forth in the Cost Proposal. In the event, that COUNTY determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by COUNTY shall be adjusted by contract amendment to accommodate the changed work.

For all services CONSULTANT shall be paid in accordance with the budget set forth in Exhibit "B" provided however, that the total payments to CONSULTANT shall not exceed \$29,741.20 without prior written authorization by COUNTY and formal Amendment to this Agreement.

In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee of \$1,889.02. The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

VII. **TERM**

This Agreement shall commence on the date hereinabove entered into and shall terminate on December 31, 2019 unless earlier terminated as hereinafter provided. This term may be extended an appropriate period of time in case of unavoidable delays and for consideration of corresponding warranted adjustments in payment by modification of this agreement as hereafter provided.

VIII. **DUE PERFORMANCE - DEFAULT**

Each party to this Agreement undertakes the obligation that the other's expectation of receiving the performance due under the terms of this Agreement will not be impaired. Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default. If the party in default does not cure the default within ten (10) days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure shall be in writing executed by both parties and must specify the reason(s) for the extension and the date the extension of time to cure expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision

and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

IX. **TERMINATION**

This Agreement may be terminated as follows:

- A. By mutual written consent of the parties; or
- B. By COUNTY or Director of Public Works upon thirty (30) days written notice to CONSULTANT.

Upon termination prior to the full and satisfactory completion of CONSULTANT's performance under this Agreement, COUNTY shall not be liable to pay CONSULTANT the total compensation set forth in Article VI of this Agreement, but CONSULTANT shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the CONSULTANT covered by this Agreement. Upon termination of this contract, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this contract will automatically be vested in the COUNTY, and no further agreement will be necessary to transfer ownership to the COUNTY.

X. **INSURANCE**

CONSULTANT shall not commence work under this Agreement until he has obtained all the insurance required herein, certificates of insurance have been submitted to COUNTY, and said insurance has been approved by COUNTY. The certificates of insurance shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to COUNTY, ten (10) days' notice if cancellation is due to nonpayment of premium.

CONSULTANT shall not allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been obtained.

Any failure of CONSULTANT to maintain the insurance required by this provision, or to comply with any of the requirements of this provision, shall constitute a material breach of the entire Agreement. COUNTY shall not be responsible for any premiums or assessments on the policy.

Certificates evidencing the issuance of the following insurance shall be filed with COUNTY within ten (10) days after the date of execution of this Agreement by CONSULTANT and prior to commencement of work hereunder.

- A. **Compensation Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Workers' Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be engaged in work. In any case of such work sublet, CONSULTANT shall require subcontractor similarly to provide Employer's Liability Insurance and Workers' Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by CONSULTANT's Workers' Compensation Insurance and Employer's Liability Insurance. Employer's Liability Insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
- B. **Commercial General Liability.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, upon himself and his employees at all times during the course of this Agreement, Commercial General Liability Insurance (Occurrence Form CG 0001) for bodily injury, personal injury, and broad form property damage, in an amount not less than One Million dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: Personal and advertising injury, Premises-operations,

Products and completed operations, Blanket contractual, and Independent CONSULTANT's liability. If such policy includes an aggregate limit, such aggregate limit shall be at least double the per occurrence limit required herein.

- C. **Automobile Liability Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased, and non-owned vehicles used in connection with CONSULTANT's business in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence.
- D. **Professional Liability Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Professional Liability Insurance for protection against claims arising out of the performance of services under this Agreement caused by errors, omissions, or other acts for which CONSULTANT, its employees, subcontractors, and agents, are liable. Said insurance shall be written with limits of not less than One Million Dollars (\$1,000,000.00). If said insurance is written on a "claims made" form, insurance shall be maintained and evidence of insurance must be provided for at least one (1) year after completion of the work under this Agreement.
- E. **Subcontractors.** CONSULTANT shall include all subcontractors as insured under the aforesaid policies or shall furnish separate certificates and endorsements to the COUNTY for each subcontractor which shall be subject to review and approval by COUNTY. All insurance coverages for subcontractors shall be subject to each of the requirements hereinabove and contain the additional insured endorsements required of CONSULTANT described with particularity hereinbelow.
- F. **Additional Insured Endorsement.** The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The COUNTY, its officers, officials, employees, and designated agents are to be covered as additional insureds and shall be added in the form of an endorsement to CONSULTANT's insurance on Form CG 20 10 11 85. CONSULTANT shall not commence work under this Agreement until he has had delivered to COUNTY the Additional Insured Endorsements required herein. This provision is not intended to extend to construction contractors contracted by the COUNTY to perform the work of improvement.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

- G. **Other Insurance Provisions.** For any claims related to the work performed under this Agreement by CONSULTANT, the CONSULTANT's insurance coverage shall be primary insurance as to the COUNTY, its officers, officials, employees, designated agents and appointed volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, designated agents or appointed volunteers shall be in excess of the CONSULTANT's insurance and shall not contribute with it.

Any deductibles or self-insured retentions must be declared to and approved by COUNTY. At the option of COUNTY, either CONSULTANT shall reduce or eliminate such deductibles or self-insurance retentions as they apply to COUNTY or CONSULTANT shall provide a financial guarantee satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense and defense-related expenses.

Insurance coverage required of CONSULTANT under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A: VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the CONSULTANT for liability in excess of such coverage, nor shall it preclude COUNTY from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of COUNTY to enforce in a timely manner any of the provisions of this section shall not act as a

waiver to enforcement of any of these provisions at a later date.

If any insurance coverage required by this Agreement is provided on a "Claims Made", rather than "occurrence" form, CONSULTANT agrees to maintain required coverage for a period of three years after the expiration of this Agreement (hereinafter, "Post Agreement Coverage") and any extensions thereof. CONSULTANT may maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This subprovision is contingent upon Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be reasonable.

COUNTY shall include a provision in its contract with the general contractor hired to perform the work of improvement a provision requiring that the general contractor and all of its subcontractors maintain general liability insurance of not less than \$1,000,000 and that such insurance include the COUNTY, its officers, officials, employees, designated agents, appointed volunteers and the CONSULTANT, as additional insureds.

XI. INDEMNIFICATION - HOLD HARMLESS

Each Party shall indemnify and hold the other harmless against all actions, claims, demands, and liabilities and against all losses, damage, cost, expenses, and attorney's fees, that arise out of, pertain to, or relate to its own negligent acts and/or omissions, recklessness, or willful misconduct which caused said claim, demand, liability, loss, damage, cost expense, and/or attorney's fees. This provision shall not extend to any claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either party. CONSULTANT's liability hereunder shall be limited by the COUNTY to the amount of the available coverage under CONSULTANT's insurance coverage as described in Section X. herein.

CONSULTANT's obligations under this Section shall survive the termination of the Agreement.

XII. CONSULTANT'S WARRANTIES

CONSULTANT hereby makes the following representations and warranties:

- A. **Standard of Care.** CONSULTANT represents that it is specially trained, licensed, experienced, and competent to perform all the services, responsibilities, and duties specified herein and that such services, responsibilities, and duties shall be performed, whether by CONSULTANT or designated subcontractors, in a manner according to generally accepted practices of the engineering profession.

If COUNTY determines that any of CONSULTANT's work is not in accordance with such level of competency and standard of care, COUNTY, in its sole discretion, shall have the right to do any or all of the following: (a) require CONSULTANT to meet with COUNTY to review the quality of the work and resolve matters of concern; (b) require CONSULTANT to correct the work at no additional charge to generally accepted standards and practices of the profession; (c) terminate this Agreement pursuant to the provisions of Article IX; or (d) pursue any and all other remedies at law or in equity.

Assigned Personnel:

1. CONSULTANT shall assign only competent personnel to perform work hereunder. In the event that at any time COUNTY, in its sole discretion, desires the removal of any person or persons assigned by CONSULTANT to perform work hereunder, CONSULTANT shall remove such person or persons immediately upon receiving written notice from COUNTY.
2. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by COUNTY to be

key personnel whose services were a material inducement to COUNTY to enter into this Agreement. CONSULTANT shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of COUNTY. With respect to performance under this Agreement, CONSULTANT shall employ the key personnel identified in Exhibit "A".

3. In the event that any of CONSULTANT's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of CONSULTANT's control, CONSULTANT shall be responsible for timely provision of adequately qualified replacements.

B. Non-Discrimination in Employment. CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, creed religion, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age. During the performance of this Contract, Consultant and its sub-consultant shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and sub-consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and sub-consultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its sub-consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

- C. Adherence to Applicable Disability Law.** CONSULTANT shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.
- D. HIPAA Compliance.** CONSULTANT will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.
- E. Safety Responsibilities.** CONSULTANT will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. CONSULTANT agrees that in the performance of work under this Agreement, CONSULTANT will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.
- F. Interest of CONSULTANT.** CONSULTANT hereby covenants that he has, at the time of the execution of this Agreement, no interest, direct or indirect, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this work, no person having such interest shall be employed.
- G. Covenant Against Contingent Fees.** The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement.

For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

- H. **Laws to be observed.** CONSULTANT will comply with all laws, regulations, orders, and decrees applicable to the PROJECT. Indemnify and defend the COUNTY against any claim or liability arising from the violation of a law, regulation, order, or decree by CONSULTANT or your employees. Immediately report to the Contract Manager a discrepancy or inconsistency between the Contract and a law, regulation, order, or decree.

If the COUNTY incurs any fines or penalties because of CONSULTANT's failure to comply with a law, regulation, order, or decree, the COUNTY will deduct the amount of the fine or penalty.

Immediately notify the Contract Manager, if a regulatory agency requests access to the job site or to records. Submit a list of documents provided to the agency and issued enforcement actions.

XIII. **ASSIGNMENT**

CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of COUNTY, except that claims for money due or to become due the CONSULTANT from COUNTY under this Agreement may be assigned by the CONSULTANT to a bank, a trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to the COUNTY. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

XIV. **INDEPENDENT CONSULTANT**

It is specifically understood and agreed that, in the making and performance of this Agreement, CONSULTANT is an independent CONSULTANT and is not an employee, agent or servant of COUNTY. CONSULTANT is not entitled to any employee benefits. COUNTY agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.

CONSULTANT is solely responsible for the payment of all federal, state, and local taxes, charges, fees, or contributions required with respect to CONSULTANT and CONSULTANT's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security, and payroll tax withholding).

XV. **MODIFICATION**

- A. This Agreement may only be modified by a written amendment thereto, executed by both parties. However, matters concerning scope of services which do not affect the agreed price may be modified by mutual written consent of CONSULTANT and COUNTY executed by Director of Public Works.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COUNTY's Project Manager.
- C. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the Cost Proposal which is a part of this contract, without prior written approval by the COUNTY's Project Manager.

XVI. **ATTORNEYS FEES AND COSTS**

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in

addition to any other relief to which such party may be entitled.

XVII.
OWNERSHIP OF DATA

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this contract will automatically be vested in the COUNTY, and no further agreement will be necessary to transfer ownership to the COUNTY. The CONSULTANT shall furnish the COUNTY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. The CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the COUNTY of the machine-readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with, any use by the COUNTY of the project documentation on other projects, for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by the CONSULTANT.
- D. Applicable patent rights provisions described in 41 CFR 1-91, regarding rights to inventions shall be included in the Agreements as appropriate.
- E. CONSULTANT may copyright reports or other agreement products. FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- F. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

XVIII.
RETENTION OF RECORDS / AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et. Seq., when applicable, and other matters connected with the performance of the contract pursuant to Government Code 10532, the CONSULTANT, subcontractors and the COUNTY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract. The state, the State Auditor, the COUNTY, FHWA or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Subcontracts in excess of \$25,000 shall contain this provision.

XIX.
JURISDICTION AND VENUE

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. CONSULTANT waives any right of removal it might have under California Code of Civil Procedure Section 394.

XX.
NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.

XXI.
SEVERABILITY

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

XXII.
NON-APPROPRIATION

In the event COUNTY is unable to obtain funding at the end of each fiscal year for professional services required during the next fiscal year, COUNTY shall have the right to terminate this Agreement, without incurring any damages or penalties, and shall not be obligated to continue performance under this Agreement. To the extent any remedy in this Agreement may conflict with Article XVI of the California Constitution or any other debt limitation provision of California law applicable to COUNTY, CONSULTANT hereby expressly and irrevocably waives its right to such remedy.

XXIII.
CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by the COUNTY's construction contractor relating to work performed by CONSULTANT's personnel and additional information or assistance from the CONSULTANT's personnel is required in order to evaluate or defend against such claims, CONSULTANT agrees to make its personnel available for consultation with the COUNTY's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that the COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs, that are being paid for the CONSULTANT's personnel services under this Agreement.
- C. Services of the CONSULTANT's personnel in connection with the COUNTY's construction contractor claims will be performed pursuant to a written supplement, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.
- D. Any subcontract in excess of \$25,000, entered into as a result of this contract, shall contain all of the provisions of this Article.

XXIV.
CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which is designated confidential by the COUNTY and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or public hearing held by the COUNTY relating to the contract, shall not authorize the CONSULTANT to further disclose such information or disseminate the same on any other occasion.
- C. The CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the COUNTY's actions on the same, except to the COUNTY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings, or in response to questions

from a Legislative committee.

- D. The CONSULTANT shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this contract without prior review of the contents thereof by the COUNTY and receipt of the COUNTY's written permission.
- E. Any subcontract, entered into as a result of this contract, shall contain all of the provisions of this Article.
- F. All information related to the construction estimate is confidential and shall not be disclosed by the CONSULTANT to any entity, other than the COUNTY.

XXV.
NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code, Section 10296, the CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against the CONSULTANT within the immediately preceding two-year period because of the CONSULTANT's failure to comply with an order of a Federal court that orders the CONSULTANT to comply with an order of the National Labor Relations Board.

XXVI.
INSPECTION OF WORK

The CONSULTANT and any subCONSULTANTS shall permit the COUNTY, State and the FHWA to review and inspect the project activities at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

XXVII.
NON-DISCRIMINATION

- A. During the performance of this Agreement, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, nation origin, physical disability (including HIV and AIDS), mental disability, mental condition (cancer), age (over 40), marital status, and denial of family care leave. CONSULTANTS and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. CONSULTANTS and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900.0 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a party hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. The CONSULTANT shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.
- C. CONSULTANT shall comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR 21 through Appendix C and 23 CFR 710.405(b) are applicable to this contract by reference.

XXVIII.
DISPUTES

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the COUNTY's Contract Manager and Department Head, who may consider written or verbal information submitted by the

CONSULTANT.

- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, the CONSULTANT may request review by the COUNTY GOVERNING BOARD of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this contract.

XXIX.
SAFETY

- A. The CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. The CONSULTANT shall comply with safety instructions issued by the COUNTY Safety Officer and other COUNTY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the COUNTY has determined that such areas are within the limits of the project and are open to public traffic. The CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

XXX.
SUBCONTRACTING

- A. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the COUNTY's Contract Manager, except that, which is expressly identified in the approved Cost Proposal.
- B. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all the provisions stipulated in this contract to be applicable to subcontractors.
- C. Any substitution of subcontractors must be approved in writing by the COUNTY's Contract Manager.

XXXI.
STATEMENT OF COMPLIANCE

The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

XXXII.

DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the COUNTY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

XXXIII.

CONFLICT OF INTEREST

- A. The CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this contract, or any ensuing COUNTY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COUNTY construction project, which will follow.
- B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. The CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

XXXIV.

REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

XXXV.

PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS FOR LOBBYING

- A. The CONSULTANT certifies to the best of his or her knowledge and belief that:
 - 1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or

employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

XXXVI.
COST PRINCIPLES

- A. The CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.
- B. The CONSULTANT also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq. are subject to repayment by CONSULTANT to the COUNTY.

XXXVII
CONTINGENT FEE

The CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the COUNTY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

XXXVIII.
AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the COUNTY'S CHIEF FINANCIAL OFFICER.

- B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the COUNTY's CHIEF FINANCIAL OFFICER of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by the COUNTY will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.
- D. CONSULTANT and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

XXXIX.
EQUIPMENT PURCHASE

- A. Prior authorization in writing, by the COUNTY's Contract Manager shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in the CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by the COUNTY's Contract Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- D. All subcontracts in excess \$25,000 shall contain the above provisions.

XL.
EVALUATION OF CONSULTANT

The CONSULTANT's performance will be evaluated by the COUNTY. A copy of the evaluation will be sent to the CONSULTANT for comments. The evaluation together with the comments shall be retained

XLIII.
ADDITIONAL PROVISIONS

This Agreement shall be governed by the laws of the State of California. It constitutes the entire Agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

COUNTY and CONSULTANT have executed this Agreement on the day and year first written above.

COUNTY OF LAKE:

CONSULTANT:

Chair, Board of Supervisors



Tom Herman, Regional Principal

ATTEST:

CAROL J. HUCHINGSON
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

ANITA L. GRANT
County Counsel

By: _____

By: 



Phone: (707) 459-4518 Email: info@shn-engr.com Web: shn-engr.com
335 S. Main Street, Willits, CA 95490-3977

Reference: 419000.044

June 25, 2019

Scott De Leon, Public Works Director
Lake County Department of Public Works
255 N. Forbes Street, Room 309
Lakeport, CA 95453

Subject: Proposal for Materials Testing Services for the Three SB1 Rehabilitation Improvement Projects, Lake County, CA

Dear Mr. De Leon:

Thank you for this opportunity for SHN Engineers & Geologists (SHN) to offer the following proposal to the County of Lake Public Works Department (County) to provide Materials Testing Services for the Three SB1 Rehabilitation Improvement Projects (Project). The County is a very important client for us and we appreciate the opportunity to again work for you. Attached in a separate envelope is SHN's cost estimate for this project.

Project Understanding

Our understanding of the Project is based on a review of the project drawings and information provided at the pre-proposal conference on June 19, 2019. The SB1 Rehabilitation Improvements Projects are located at Scotts Valley Road at the Highway 29 intersection, South Main Street and Soda Bay Road Intersection and Soda Bay Road from Manning Creek to Big Valley Rd. Each project location will consist of an overall 2-inch milling of the existing pavements, 4-inch dig-out sections at selected locations (dig out locations will be delineated in the field by the Engineer), 4-inch dig-outs paving, an overall 2-inch overlay, and spreading and compacting shoulder backing. It is our understanding that the work (scope of work for materials sampling & testing) will be performed during nighttime hours.

The SHN laboratory is familiar with the updated County of Lake Quality Assurance Program (QAP) and the testing requirements specified by the state funding agency (Caltrans SB1) and employs the qualified staff necessary for adequate construction materials sampling and testing for state-funded pavement repair projects. In addition to our experienced and qualified technical staff, our laboratories in Willits and Eureka are fully accredited through AASHTO and Caltrans Statewide Independent Assurance Program and we are currently enrolled in proficiency sample programs through CCRL, AMRL, and Caltrans RSP.



Mr. Scott De Leon

Proposal for Materials Testing Services, Three SB1 Rehabilitation Improvement Projects, Lake Co.

June 25, 2019

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Construction Materials Sampling and Testing Scope

Our scope of work is to provide the County of Lake Public Works Department Quality Assurance sampling and testing and will consist of compaction testing of hot mixed asphalt (HMA) for dig outs and overlays (CT 375), and Aggregate Base for dig outs and shoulder backing (CT 231). Construction materials sampling will include shoulder backing material, aggregate base, Asphalt production startup, and during asphalt production (every 750 tons).

Engineer Qualifications

The Laboratory Engineer for SHN Willits Laboratory is John Dailey, PE, GE. Mr. Dailey has been with SHN for 15 years and has acquired over 30 years of experience in Geotechnical Engineering, Civil Engineering, materials testing, and special inspections and is licensed as a Professional Civil and Geotechnical Engineer in the State of California and Oregon. John has overseen the laboratory throughout many state and federally-funded bridge and road rehabilitation projects. Below is a list of more recent projects that John Dailey has overseen the laboratory for acceptance testing and/or quality assurance testing for local agencies in accordance with State and local requirements. Mr. Dailey's resume is included in Appendix 1.

- Mockingbird Lane Bridge over Robinson Creek – completed November 2018, Manouch Mahmoudzede, PE
- Reeves Canyon Rd. Bridge over Forsyth Creek – completed Oct. 2017, Jason Wise, Mendocino County DOT
- Anderson Creek Bridge – completed Nov. 2016, Leland Mason, Quincy Engineers
- Dry Creek Bridge – completed Nov. 2016, Leland Mason, Quincy Engineers
- Moore St. Bridge – completed Oct. 2016, Jason Wise, Mendocino County DOT
- Muir Mill Road Bridge over Baechtel Creek – completed Nov. 2016, Jason Wise, Mendocino County DOT
- Talmage Interchange & Airport Park Blvd. Reconstruction – completed July 2018, Jarod Thiele City of Ukiah

Mr. Dailey is committed to be the full time laboratory engineer and overseeing all laboratory and field operations throughout the project



Staff Qualifications

Our key staff members for this project will be Stephen James and Rygg Larsen from the Willits office. Their qualifications are as follows:

- o Stephen James – JTCP Training 2018 -2019 HMA 1 & 2, Soils & Aggregate Module, Current CT 375 & CT231 Certified, ACI aggregate testing, ACI aggregate base testing, with SHN for 9 years.
- o Rygg Larsen – Current CT 375 & CT 231, ACI Concrete Strength Testing, with SHN for 1 year.

Below is a list of projects consisting of state-funded pavement repair for local agencies completed by Stephen James. Mr. James resume is included in Appendix 1.

- Oak Manor Dr. Reconstruction – City of Ukiah, completed June 2019, City of Ukiah Public Works Dept., Jarod Theile
- Talmage Road Interchange & Airport Park Blvd. – Ukiah, CA, Completed July 2018, City of Ukiah Public Works Dept., Jarod Theile
- City of Ukiah Sewerline and Roadway Reconstruction – Completed June 2018, City of Ukiah Public Works, Andrew Strickland
- State Highway 20, Lake County – QC Testing for Granite Const., Completed June 2018, Caltrans – Dan Kraft, PE

The identified staff will be available for the proposed night work and committed to a timely completion of the project. We will have back-up support staff available for our daytime work during nighttime operations. SHN proposes to sub-contract with Kleinfelder, Inc. for laboratory testing of the startup hot mixed asphalt (HMA) samples. SHN verifies that all sub-contracted testing is performed by Caltrans and AASHTO-accredited laboratories and certified technicians. Samples will be delivered to Kleinfelder in Sacramento, CA and test results will be reported as received.

Firm Qualifications

SHN Consulting Engineers and Geologists, Inc. is a C corporation, employing more than 100 technical staff in its 5 regional offices throughout Northern California and Southern Oregon. Thomas M. Herman, Regional Principal has the authority to bind the firm in a contractual agreement:

SHN employs the qualified and experienced staff necessary to perform the requested third party testing and offers Caltrans, ACI, NICET, and AASHTO certified technical staff and AASHTO R18 accredited testing laboratories in our Willits and Eureka offices. Additionally, the project will be overseen by our registered California Geotechnical Engineer, John Dailey. SHN proposes to staff the project from the Willits office and



Mr. Scott De Leon

Proposal for Materials Testing Services, Three SB1 Rehabilitation Improvement Projects, Lake Co.

June 25, 2019

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testing laboratory. However, in the event of scheduling conflicts, we can draw on the resources of our Eureka office and testing laboratory at no additional travel expense. We do not have minimum time charges per site visit, and we will invoice the city only for time spent performing the required services.

SHN appreciates the opportunity to submit this Request for Proposal to provide construction materials quality assurance testing services for the above referenced project. Again, thank you for this opportunity and please do not hesitate to call if you have any questions.

Sincerely,

SHN

A handwritten signature in blue ink that reads "Steph James". The signature is written in a cursive, flowing style.

Stephen James
Laboratory Manager
Materials Testing and Inspection

SPJ:amg

- Appendices:
1. Resumes
 2. Laboratory Management Structure
 3. Disclosure of Lobbying Activities



RESUMES 1

Distinguishing Qualifications

Geotechnical Engineering
Project Management
Civil Engineering Design of
Underground Structures
Environmental Investigations
Remediation Systems Design

Years of Experience: 40

Years with SHN: 15

Education

B.S., Civil Engineering,
University of California, Davis;
1975

Graduate Studies, University of
California, Davis; 1975-1976

Graduate Studies, California
State University, Fullerton; 1977

Certificate in Environmental Site
Assessment & Remediation, UC
Berkeley Extension; 1998

Professional Registrations

Registered Civil Engineer,
California; No. 30345

Registered Geotechnical
Engineer; California;
No. 256

Professional Engineer / Civil and
Geotechnical, Oregon; No.
79564

Professional Civil Engineer,
Washington, No. 46060

Qualified SWPPP Developer
(QSD) / SWPPP Practitioner
(QSP) No 24360

Memberships

American Society of Civil
Engineers

Association of Engineering
Geologists

International Society of Soil
Mechanics and Foundation
Engineers

John H. Dailey, PE, GE

Senior Geotechnical Engineer

Relevant Experience

Mr. Dailey has more than 40 years of experience in geotechnical, civil, and environmental engineering while working with federal, state, and local regulatory agencies, as well as the private sector. His experience includes project management, subsurface geotechnical and environmental investigations, site remediation, plan and procedure development, specification and bid preparation, permitting, and subcontractor selection.

Mr. Dailey's field experience includes excavation and drilling for geotechnical and environmental investigations, including soil and groundwater sampling; monitoring well design and installation; field and laboratory soil testing; and design and installation of remediation systems, including soil vapor extraction, pump and treat, and ozone sparging. Mr. Dailey has also performed investigations of landslides and structural damage due to landslides, settlement, undermined foundations, expansive soils and pavement evaluation and rehabilitation, with recommendations for repair to damage and correction of causes.

Representative Projects

Upper Lake Reservation Sewer Line Extension, Upper Lake, CA. Project engineer during geotechnical investigation and evaluation for a force main sewer extension using Horizontal Directional Drilling (HDD) methods. Evaluation included estimating maximum allowable drilling fluid pressures and minimum required drilling fluid pressures to minimize potential hydrofracture during drilling of pilot hole, reaming, and pullback operations.

Hopland Indian Rancheria, Hopland, CA. Project engineer during geotechnical evaluation of full-depth reclamation with cement (FDR-C) of County roads within the Rancheria for Bureau of Indian Affairs (BIA).

Waterfront Drive (G to J Streets) Connection, Eureka, CA. Project engineer during geotechnical investigation and preparation of plans for extending and widening of an arterial-commercial street, and to accommodate excavations for removal of contaminated soils at planned locations and to planned depths.

Roblar Road Quarry, Petaluma, CA. Project Manager/Engineer for a permitting-based feasibility study for a hard rock quarry. Performed geotechnical investigation, slope stability analyses, and pavement evaluation for ingress and egress roads with recommendations for upgrading roads for increased Traffic Index due to proposed truck traffic.

Matson Creek Bridge, Coos County, OR. Project Engineer during geotechnical investigation for a concrete bridge located on Catching Slough Road that was supported on a deep driven pile foundation system.

Pine Hill Road Bridge Replacement, Eureka, CA. Project engineer during geotechnical investigation for a concrete bridge supported on a driven pile foundation system in over 70 feet of soft bay mud and liquefiable sand layers.

Areas of Expertise

- Project Management
- Special Inspection
- Construction Materials Testing

Years of Experience: 20

Years with SHN: 9

Registrations and Certifications

Caltrans Certificate of Proficiency

American Concrete Institute – Concrete Field Testing Technician – Grade 1 ID# 00030068

ICC Certified Structural Masonry, Reinforced Concrete, and Structural Steel & High Strength Bolting Special Inspector

NICET Level 2 Asphalt, Soils, and Concrete #123262

TxDOT Hot Mix Asphalt Center – Superpave Training Program

TxDOT Level 1A(e) HMA Plant Operations Specialist

AWS Certified Welding Inspector #09021121

Magnetic Particle Level 2 NDT Inspector

Ultrasonic Level 2 NDT Inspector

Sharp Industrial Radiation Safety Training Certified

Radiation Safety Officer Training

24 Hour Hazwoper Training

Stephen James

Laboratory and Inspections Manager
Certified Special Inspector

Relevant Experience

Mr. James has over 20 years of experience providing special inspections including structural steel welding, structural concrete, structural masonry, hot mix asphalt and other construction materials. In addition to a long list of special inspection certifications, Mr. James provides effective and timely project management for all types of public and private sector projects. Mr. James also provides a wide range of construction materials laboratory testing experience and certifications as well as the educational background to provide Quality Assurance and Quality Control for all field inspections and laboratory testing procedures. As a Certified Welding Inspector, Mr. James is competent in visual weld inspections, nondestructive testing, and evaluation, writing welding procedure specifications (WPS), and qualifying welders and welding operators.

Representative Special Inspection Experience

Hildebrand Bridge Replacement Project, Lake County, CA

The project consisted of replacing the existing bridge on Hilderbrand Drive (CR 125) crossing St. Helena Creek. The new bridge is a 100-foot long, 21.5-foot wide, single span precast pre-stressed concrete girder bridge with reinforced concrete wall abutments. Quality control testing including concrete sampling, batch plant inspection, source quality control sampling, earthwork compaction testing, asphalt pavement compaction testing and sampling, laboratory testing of embankment fill, subgrade, aggregate base and HMA.

Feliz Creek Bridge Replacement, Mendocino County, CA

The Project consisted of the replacement of the existing bridge with the installation of a new bridge and realigning the County road. The materials testing included compaction testing for new roadway embankment and road base, concrete sampling and testing for drilled, cast-in-place piers, abutments, and bridge deck and structure backfill testing. All testing was performed in accordance with Caltrans test methods.

Big Valley Rancheria Roads Project, Soda Bay Road Realignment, County of Lake, CA. This project consisted of construction materials acceptance testing in accordance with the Federal Highway Administration for Granite Construction and the Bureau of Indian Affairs. Our scope of work for the project included laboratory testing and field compaction testing on embankment fill, lime/cement stabilized subgrade, aggregate base, hot mixed asphalt and sampling and testing concrete.

Soda Bay Road Rehabilitation, Lake County, CA Provided acceptance testing and inspection for repair dig-out repair sections and overlay from MP 11.5 to 13.8. Testing involved in-place nuclear density testing, monitoring laydown temperatures, and cored in-place density testing.

North State Street Improvements, County of Mendocino, CA. Construction Materials Testing for asphalt placement and bridge construction. Testing on this project was in accordance with Caltrans test methods.

Central Street Rehabilitation, City of Willits, CA

Provided acceptance testing for this locally funded street rehabilitation project. Testing included aggregate base qualification testing, concrete sampling and testing, and compaction testing of aggregate base and hot mixed asphalt.



MANAGEMENT STRUCTURE 2

Laboratory Management Structure

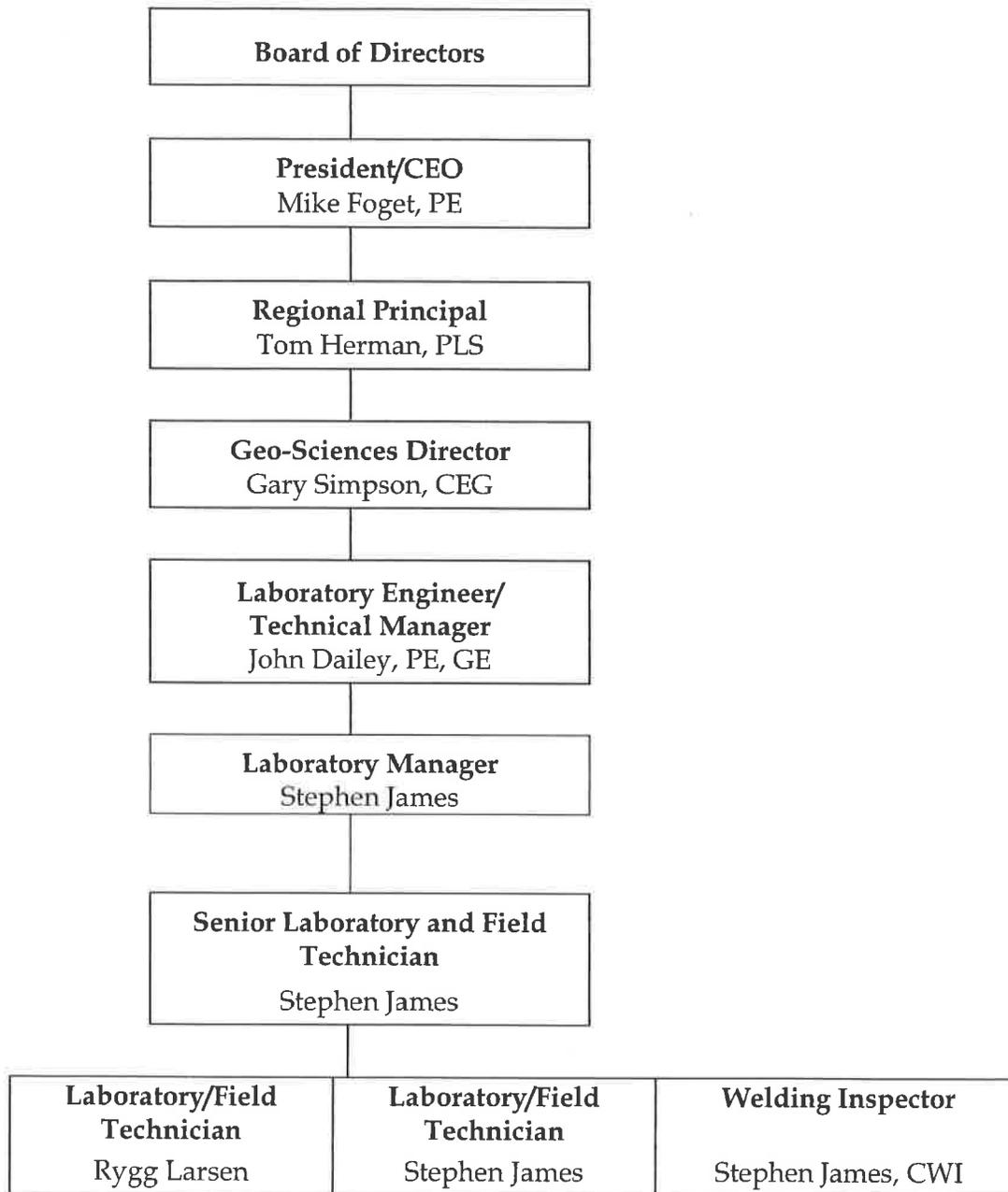


EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3
ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
 (CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$6,991.96	92	=	\$76.00	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation	=		
Year 1	\$76.00	+	3.5%	=	\$78.66	Year 2 Avg Hourly Rate
Year 2	\$78.66	+	3.5%	=	\$81.41	Year 3 Avg Hourly Rate
Year 3	\$81.41	+	3.5%	=	\$84.26	Year 4 Avg Hourly Rate
Year 4	\$84.26	+	3.5%	=	\$87.21	Year 5 Avg Hourly Rate
Year 5	\$87.21	+	3.5%	=	\$90.26	Year 6 Avg Hourly Rate
Year 6	\$90.26	+	3.5%	=	\$93.42	Year 7 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year	*	Total Hours per Cost Proposal	=	Total Hours per Year	
Year 1	100.00%	*	92.0	=	92.0	Estimated Hours Year 1
Year 2	0.00%	*	92.0	=	0.0	Estimated Hours Year 2
Year 3	0.00%	*	92.0	=	0.0	Estimated Hours Year 3
Year 4	0.00%	*	92.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	92.0	=	0.0	Estimated Hours Year 5
Year 6	0.00%	*	92.0	=	0.0	Estimated Hours Year 6
Total	100%		Total	=	92.0	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)	*	Estimated hours (calculated above)	=	Cost per Year	
Year 1	\$76.00	*	92.0	=	\$6,991.96	Estimated Hours Year 1
Year 2	\$78.66	*	0.0	=	\$0.00	Estimated Hours Year 2
Year 3	\$81.41	*	0.0	=	\$0.00	Estimated Hours Year 3
Year 4	\$84.26	*	0.0	=	\$0.00	Estimated Hours Year 4
Year 5	\$87.21	*	0.0	=	\$0.00	Estimated Hours Year 5
Year 6	\$90.26	*	0.0	=	\$0.00	Estimated Hours Year 6
	Total Direct Labor Cost with Escalation	=		=	\$6,991.96	
	Direct Labor Subtotal before Escalation	=		=	\$6,991.96	
	Estimated total of Direct Labor Salary Increase	=		=	\$0.00	Transfer to Page 1

NOTES:

- This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
- An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
- Calculations for anticipated salary escalation must be provided.

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

- 1 Generally Accepted Accounting Principles (GAAP)
- 2 Terms and conditions of the contract
- 3 Title 23 United States Code Section 112 - Letting of Contracts
- 4 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
- 5 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
- 6 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: Stephen James Title *: Laboratory Manager
Signature:  Date of Certification (mm/dd/yyyy): 06/25/2019
Email: sjames@shn-engr.com Phone Number: 707-459-4518
Address: 335 S Main St. Willits, CA 95490

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Lake County SB1 Pavement Rehabilitation Projects 2019
Other Direct Costs Estimate (Construction Materials Testing)

Materials Testing Estimate:

1. Asphalt Compaction Testing <i>(CT 375 testing for dig-outs and overlays)</i>		
a) Mileage	8 trips	\$.54/mile x 800 miles
b) Nuclear Gauge Hourly		48(hours) at \$25/each
c) Core Drill/ Core Samples		10 cores for gauge Correlation
Asphalt Paving Subtotal:		3,182
2. Asphalt Startup & Production Sampling & Testing <i>(laboratory testing)</i>		
a) 3 combined Gradation	3 x \$110	330
b) Sand Equivalent	3 x \$50	150
c) Maximum Specific Gravity	3 x \$75	225
d) Asphalt Binder Content Correction Factor	1 x \$350	350
e) Asphalt Binder Content Ignition Method	3 x \$125	375
f) HMA Moisture Content	3 x \$20	60
g) Air Voids	3 x \$250	750
h) Aggregate Quality Testing (T335,T96,CT235, T304)	1 round of tests	425
i) VMA, Moisture Susceptibility, Dust Proportion, Hamburg Wheel Track	1 round of tests	1255
HMA Testing Subtotal:		3,920
3. Sub-grade & Aggregate Base for Roadway and Shoulder Backing <i>(compaction testing and laboratory testing)</i>		
a) Equipment Charges: Nuclear Gage	\$25/hr. x 12	300
b) Laboratory Charges	(CT 216, CT 217, CT 202)	1560
Aggregate Base Subtotal:		1,860
6. Estimated Total Mileage Cost (total 800 miles)		<u>\$432</u>
7. Estimated Materials Testing Total		<u>\$8,530</u>

