

**CITY OF COACHELLA  
PROFESSIONAL SERVICES AGREEMENT  
PROJECT ST-86 WITH SCST**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 14<sup>th</sup> day of February, 2018 by and between the City of Coachella, a municipal corporation organized under the laws of the State of California with its principal place of business at 1515 6<sup>th</sup> Street, Coachella, California 92236 ("City") and SCST, Inc. (SCST), a corporation with its principal place of business at 6280 Riverdale Street, San Diego, CA 92120 ("Consultant"). The City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Special Inspection and Materials Testing services to public clients, is licensed in the State of California, and is familiar with the plans of the City.

**2.2 Project.**

The City desires to engage Consultant to render such services for the ATP 1 Project ST-86 Federal Project # ATPL-5294 (015) project ("Project") as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Special Inspection and Materials Testing consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from February 1, 2018 to February 1, 2019, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and

deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

### **3.2 Responsibilities of Consultant.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of the City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, the City shall respond to Consultant's submittals in a timely manner. Upon request of the City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of the City.

3.2.4 Substitution of Key Personnel. Consultant has represented to the City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of the City. In the event that the City and Consultant cannot agree as to the substitution of key personnel, the City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows:

3.2.5 City's Representative. The City hereby designates Gordon Fisher, City Project Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). The City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Stephen T. Ward, Manager of Geotechnical Field Services/ Senior Project Manager, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with the City staff in the performance of Services and shall be available to the City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8.1 Period of Performance and Liquidated Damages. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Project Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Consultant shall pay

to the City as fixed and liquidated damages the sum of **Zero Dollars (\$000.00) per day** for each and every calendar day of delay beyond the Performance Time or beyond any Project Milestones established pursuant to this Agreement.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: One Million Dollars \$1,000,000.00 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by

the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.9 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth

in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Thirty-Four Thousand Eight Hundred Forty-Five Dollars and Zero Cents (\$34,845.00)** without written approval of the City's Engineer. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to the City a monthly itemized statement which indicates work completed and hours of the Services rendered by Consultant. The statement shall describe the amount of the Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. The City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by the City.

3.3.4 Extra Work. At any time during the term of this Agreement, the City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Labor Code Requirements.

3.3.5.1 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 1600, 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. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. The City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.5.2 Registration and Labor Compliance. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then, in addition to the foregoing, pursuant to Labor Code sections 1725.5 and 1771.1, Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by

the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.5 General Provisions.**

#### **3.5.1 Termination of Agreement.**

3.5.1.1 Grounds for Termination. The City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to the City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, the City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of the Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:



**Consultant:**

Stephen T. Ward  
Manager of Geotechnical Field Services  
Senior Project Manager

**City:**

City of Coachella  
1515 6<sup>th</sup> Street  
Coachella, CA 92236  
Attn: Gordon Fisher, Project Manager, Engineering Department

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**3.5.3 Ownership of Materials and Confidentiality.**

**3.5.3.1 Documents & Data; Licensing of Intellectual Property.** This Agreement creates a non-exclusive and perpetual license for the 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 all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant 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. The City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at the City’s sole risk.

**3.5.3.2 Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and 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 the City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. 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 the City’s name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

3.5.6 Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse the City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by the City, its officials officers, employees, agents or volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 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. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. 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.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, 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. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 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 bind each respective Party.

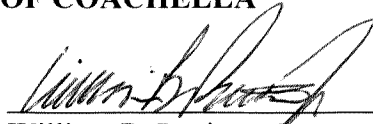
3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### **3.6 Subcontracting.**

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.


**CITY OF COACHELLA**

By:

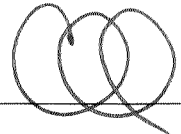
  
\_\_\_\_\_  
William B. Pattison, Jr.  
City Manager

**SCST, Inc.**

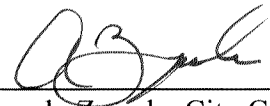
By:

  
\_\_\_\_\_  
Neal W. Clements, PE  
Owner/CEO  
February 5, 2018

*Attest:*

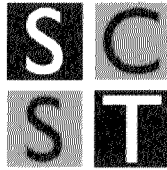
  
\_\_\_\_\_  
Carlos Campos, City Attorney

*Attest:*

  
\_\_\_\_\_  
Angela Zepeda, City Clerk

# EXHIBIT "A"

## SCOPE OF SERVICES



SDVOSB DVBE

SCST, Inc.  
Corporate Headquarters  
6780 Riverdale Street  
San Diego, CA 92130  
619 280 4327  
619 280 4327  
619 280 4327  
www.scst.com

January 30, 2018

SCST Proposal No. MS18-0035

Gordon Fisher  
City of Coachella Dept. of Public Works  
53462 Enterprise Way  
Coachella, CA 92236

Subject: BUDGET ESTIMATE FOR SPECIAL INSPECTION AND MATERIALS TESTING  
ACTIVE TRANSPORTATION PROGRAM – CYCLE 1 PROJECT  
VARIOUS LOCATIONS  
COACHELLA, CA 92236  
FEDERAL PROJECT NO. ATPL-6294(015)  
CITY PROJECT NO. ST-86

Dear Mr. Fisher:

In accordance with your request, SCST, Inc., (SCST) has prepared this proposal to provide field and laboratory testing at the subject project.

These services will be provided on time and materials basis and will be billed in accordance with the rates and stipulations described in this budget estimate. Based on the aforementioned scope of work, the cost will be approximately **\$34,845.00**. A minimum charge of two hours per visit will be applied to all field services. Additional services may be provided upon request.

### DEFINITION OF RESPONSIBILITY

The presence of our field representative will be for the purpose of observing the construction and reporting its general compliance with the approved plans and the applicable building codes. Our work does not include the supervision or direction of the contractor's work, his employees or agents. The contractor is responsible for his/her own work, and neither the presence of our field personnel nor the observation and testing by this firm should excuse him in any way for defects in his work. It should further be understood that we are not responsible for site safety.

Geotechnical Engineering • Environmental Science & Engineering • Special Inspection & Materials Testing • Facilities Consulting

**CLOSURE**

SCST appreciates this opportunity to provide our professional services and is most interested in becoming a member of your consultant team. SCST has considerable experience in successfully providing these services and we are confident that we can provide them in a timely and cost effective manner. Should you have any questions regarding this budget estimate or if we may be of further service, please contact our office at 619.280.4321.

Respectfully Submitted,  
**SCST, Inc.**

Stephen T. Ward  
Manager of Geotechnical Field Services/Senior Project Manager

(1) Addressee via e-mail:

**EXHIBIT "B"**

**SCHEDULE OF SERVICES**

As Needed



# EXHIBIT "C"

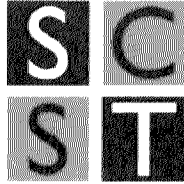
## COMPENSATION

Client City of Coachella  
 Project ATP, Cycle 1 Project  
 Budget Summary/Cost Estimate Table

January 30, 2018  
 SCST Proposal No. MS18-0035  
 Prevailing Wage Rates

### BUDGET ESTIMATE SUMMARY MATERIALS ENGINEERING SERVICES

	Estimated Hours/Unit		Rate/Unit	Total Cost
<b>FIELD AND PROFESSIONAL SERVICES</b>				
<b>FIELD MATERIALS TESTER</b>				<b>\$14,768.00</b>
<i>Earthwork Inspection and Testing</i>				
Cal Trans Technician - Field (Subgrade)	32 hours	@	\$92.00 /hour	\$2,944.00
Cal Trans Technician - Field (Base)	32 hours	@	\$92.00 /hour	\$2,944.00
<i>Hot Mix Asphalt</i>				
Cal Trans Technician - Field	60 hours	@	\$92.00 /hour	\$5,520.00
Coring Technician - Density Cores	28 hours	@	\$120.00 /hour	\$3,360.00
<b>PROFESSIONAL STAFF</b>				<b>\$1,488.00</b>
Principal Engineer/Project Management Reports	12 hours	@	\$124.00 /hour	\$1,488.00
<b>SUBTOTAL FOR FIELD AND PROFESSIONAL SERVICES</b>				<b>\$16,256.00</b>
<b>MATERIALS LAB TESTING</b>				
<i>Class 2 Aggregate Base Lab Testing</i>				
Sieve Analysis	9 tests	@	\$89.00 /test	\$801.00
Sand Equivalent	9 tests	@	\$86.00 /test	\$772.00
R-Value	9 tests	@	\$276.00 /test	\$2,484.00
<i>HMA Lab Testing</i>				
Asphalt Binder Content	12 tests	@	\$183.00 /test	\$2,196.00
Gyratory Compacted (for Air Voids) - 3 plugs/test	12 tests	@	\$399.00 /test	\$4,788.00
Core Density (Cal 375)	18 tests	@	\$74.00 /test	\$1,332.00
Maximum Theoretical Density (Cal 309)	12 tests	@	\$133.00 /test	\$1,596.00
Hamburg Wheel Track (AASHTO T324)	2 test	@	\$900.00 /test	\$1,800.00
Tensile Strength Ratio for Moisture Susceptibility (AASHTO T283)	2 test	@	\$900.00 /test	\$1,800.00
Ignition Oven Correction Factor - per mix	2 test	@	\$500.00 /test	\$1,000.00
<b>SUBTOTAL FOR MATERIALS LAB TESTING</b>				<b>\$18,589.00</b>
<b>TOTAL FOR FIELD AND MATERIALS TESTING SERVICES</b>				<b>\$34,845.00</b>



SDV058 DVB6

**SCST, Inc.**  
*Schedule of Fees for Professional Services – Prevailing Wage*  
*Effective January 1, 2018*

SCST, Inc.  
 Corporate Headquarters  
 5780 Riverdale Street  
 San Diego, CA 92120  
 619.215.4321  
 619.280.4321  
 619.280.4717  
 www.scst.com

**PROFESSIONAL SERVICES**

***Professional (Engineering, Geology, Environmental)***

Principal Professional .....	\$174
Senior Professional .....	155
Project Professional .....	115
Staff Professional .....	96
Drafter .....	77

***Technician & Inspector***

Quality Control Specialist .....	\$87
Lab Technician .....	82
Building Inspector .....	94
Group 1 .....	92
Group 2 .....	94
Group 3 .....	96
Coring .....	120

***Project Management***

Senior Project Manager .....	\$156
Project Manager .....	124
Administrative Assistant .....	55

***Travel and Miscellaneous***

Pick Up .....	\$66/trip
Travel Time .....	Hourly Rate
Per Diem (variable, depending on location) .....	Quote
Prevailing Wage Hourly Surcharge for Technicians and Inspectors per California Labor Code §720, et. Seq. ....	Quote
Overtime and Saturday Rate .....	1.5 x Regular Hourly Rate
Sunday and Nationally Recognized Holiday Rate (including the day after Thanksgiving) .....	2 x Regular Hourly Rate
Rush Surcharge .....	normal rate plus 50%

**LABORATORY TESTS**

***Soil and Aggregate***

Absorption Coarse Aggregate (Cal 206, ASTM C127) .....	\$38
Absorption Fine Aggregate (Cal 207, ASTM C128) .....	38
California Bearing Ratio includes Max Density Method C (ASTM D854) .....	618
California Impact (Cal 216) .....	206
Chloride Ion Testing (Cal 422) .....	150
Clay Lumps in Aggregate Per Size (ASTM C142) .....	150
Cleanliness Value – 1" and Smaller (Cal 227) .....	200
Cleanliness Value – Larger than 1" (Cal 227) .....	225
Consolidation (ASTM D2435) .....	200
Corrosivity Testing (Soluble Chlorides and Sulfates, pH and Resistivity) .....	187
Crushed Particles/Size (Cal 205, ASTM D693) .....	121
Direct Shear (ASTM D3080) .....	208
Durability Factor (Cal 229, ASTM D3744) .....	97
Durability Index (Cal 229, ASTM D3744) .....	\$224
Expansion Index (ASTM D4289) .....	177
Fine Aggregate Angularity (AASHTO T304) .....	200

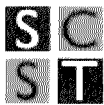
Geotechnical Engineering • Environmental Science & Engineering • Special Inspection & Materials Testing • Facilities Consulting

### *Soil and Aggregate - Continued*

Fineness Modulus (ASTM C136) .....	24
Flat & Elongated Pieces/Size (ASTM D4791) .....	175
Light Weight Pieces (ASTM C123) .....	175
Liquid Limit (Cal 204, ASTM D4318) .....	58
Los Angeles Abrasion - larger than 1 1/2" (Cal 211, ASTM C535) .....	237
Los Angeles Abrasion - 1 1/2" and smaller (Cal 211, ASTM C131) .....	224
Maximum Density Check Point (ASTM D698/D1557) .....	88
Maximum Density/Optimum Moisture - 4" (ASTM D1557) .....	200
Maximum Density/Optimum Moisture - 4" (ASTM D698) .....	200
Maximum Density/Optimum Moisture - 6" (ASTM D1557) .....	220
Maximum Density/Optimum Moisture - 6" (ASTM D698) .....	200
Minimum Density (ASTM D1556) .....	74
Moisture Content (Cal 226, ASTM C566, ASTM D2216) .....	35
Natural Density - Chunk Sample (ASTM D2937) .....	41
Natural Moisture/Density Ring or Core Sample (ASTM D2937) .....	35
Organic Impurities (Cal 213, ASTM C40) .....	90
Organic Matter (ASTM D2974) .....	75
Percent Finer than #200 (ASTM C117, ASTM D1140) .....	70
Permeability Remold Sample includes Maximum Density (ASTM D2434) .....	400
Permeability Remold Sample includes Maximum Density (ASTM D5084) .....	560
Permeability Undisturbed Sample (ASTM D5084) .....	360
Petrographic Analysis (Cal 215, ASTM C295) .....	<i>Quote</i>
pH & Resistivity (Cal 204, ASTM D4318) .....	126
Plastic Limit (Cal 204, ASTM D4318) .....	69
Plasticity Index (Cal 643, ASTM G51) .....	127
Potential Reactivity (ASTM C289) .....	220
Residual Shear (ASTM D6467) .....	442
Rock Correction (ASTM D4718) .....	26
R-Value (Cal 301, ASTM D2844) .....	276
Sand Equivalent (Cal 217, ASTM D2419) .....	88
Sieve Analysis (Cal 202, ASTM C136, ASTM D422) .....	90
Sieve Analysis Pit Sample (Cal 202, ASTM C136) .....	128
Sieve Analysis with Hydrometer (Cal 203, ASTM D422) .....	200
Soil Cement Compression Strength (Cal 312, ASTM D1632) .....	50
Soil Cement Cylinder Fabrication (Cal 312, ASTM D1632) .....	100
Soluble Chlorides (Cal 422) .....	62
Soluble Sulfate (Cal 417) .....	62
Soundness 5 Cycles/Size (Cal 214, ASTM C88) .....	120
Specific Gravity Coarse Aggregate (Cal 206, ASTM C127) .....	69
Specific Gravity Fine Aggregate (Cal 207, ASTM C128) .....	74
Triaxial Shear Consolidated-Undrained (ASTM D4767) .....	330
Triaxial Shear Unconsolidated-Undrained (ASTM D2850) .....	150
Triaxial Staged Consolidated-Undrained (ASTM D4767) .....	420
Triaxial Staged Unconsolidated-Undrained (ASTM D2850) .....	210
Unconfined Compression (ASTM D2166) .....	162
Unit Weight Aggregate (Cal 212, ASTM C29) .....	80

### *Asphalt Concrete*

Asphalt Conformance Testing Full (inc. % Bitumen, SA Extracted, (2) Hveem, Maximum Theoretical, (2) Stabilometer Value) .....	\$833
Asphalt Conformance Testing Modified (inc. % Bitumen, SA Extracted, (2) Hveem) .....	465
Asphalt Core Specific Gravity (Cal 308, ASTM D2726) .....	58
Asphalt Core Specific Gravity Waxed (Cal 308, ASTM D1188) .....	74
Emission Content (CTM 382) .....	178
Film Stripping (Cal 302) .....	178
Gyratory Compacted Plug (AASHTO T312) .....	133
Hamburg Wheel-Plant Produced HMA (AASHTO T324-Cal-Trans Section 39) .....	900
Hveem - Maximum Bulk Specific Gravity (Cal 308) .....	133



### *Asphalt Concrete - Continued*

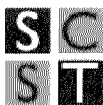
Hveem & Stabilometer Value (Cal 366)	\$168
Ignition Oven Correction Factor (AASHTO T308)	500
Marshal Density, Stability & Flow (ASTM D6927) per plug	168
Marshal Density (ASTM D6926) per plug	133
Moisture Content of Asphalt Mixtures Using Microwave (Cal 370)	50
Moisture Vapor Susceptibility (Cal 307)	259
Optimum Bitumen Content (Cal 367)	3,100
Percent Bitumen Asphaltic Concrete (Cal 382, ASTM D6307)	183
Residue by Evaporation (Cal 331)	178
Rice - Maximum Theoretical Specific Gravity AC (Cal 309, ASTM D2041)	133
Sieve Analysis - Extracted Aggregate (Cal 382, ASTM D5444)	89
Stability and Flow (ASTM D1559)	147
Stabilometer Value (Cal 366)	147
Superpave Aggregate Qualities (Standard Cal-Trans Section 39 Requirements)	1,050
Superpave Mix Design-No RAP testing or Aggregate Qualities (AASHTO R35/Cal-Trans Section 39)	6,700
Superpave RAP Testing-Fractionated (ASTM D2172/AASHTO T308/Cal-Trans Section 39)	5,700
Superpave RAP Testing-Not Fractionated (ASTM D2172/AASHTO T308/Cal-Trans Section 39)	2,850
Swell Asphalt Concrete (Cal 305, ASTM D1561)	147
Tensile Strength Ratio-Plant Produced HMA (AASHTO T283)	900
Wet Track Abrasion (ASTM D3910)	285

### *Concrete*

2X2 Cube Compression	\$27
Concrete Core Compression (ASTM C42)	59
Concrete Cylinder Compression (Cal 521, ASTM C39)	27
Flex Beam Modulus of Rupture (Cal 523, ASTM C78)	74
Modulus of Elasticity (Cal 522, ASTM C469)	261
Shotcrete Mockup Panel (ASTM C1140)	1,040
Shotcrete Panel, 3 Cores - Compression (CBC)	290
Shrinkage-Hardened Concrete (ASTM C157 - Modified)	371
Split Tensile, Concrete Cylinder (ASTM C496)	74
Time of Set (ASTM C403)	200
Trial Batch Beam (Cal 523, ASTM C192)	69
Trial Batch Concrete Cylinder (Cal 521, ASTM C192)	38
Trial Batch Fabrication (ASTM C192)	298
Unit Weight, Hardened Concrete (ASTM C642)	45
Unit Weight, Lightweight Concrete (ASTM C567)	59

### *Masonry*

Absorption Block (ASTM C140)	\$38
Compression Adobe	52
Compression Block, Standard (ASTM C140)	50
Compression, Brick (ASTM C67)	38
Efflorescence Block	59
Efflorescence, Brick (ASTM C67)	45
Grout Prism Compression (ASTM C1019)	27
Masonry Core Compression (ASTM C42)	51
Masonry Core Shear (CBC 2105A.4)	92
Masonry Prism Compression (ASTM E447)	149
Mortar Bond Strength - Pull Test (ASTM C482)	62
Mortar Cylinder Compression	27
Mortar Shear Strength (ANSI 118)	53
Relative Mortar Strength (Cal 515)	850
Shrinkage - Masonry Block (ASTM C426)	252
Trial Grout Prisms (ASTM C942)	38
Water Retention and Air Content (ASTM C270)	468



### *Metal*

Bend Test, Reinforcing Steel (ASTM A615)	\$45
Bend Test, Structural Steel (ASTM A370)	60
Bolt Assembly – Hardness Test	74
Bolt Assembly – Tensile & Proof Load Test	74
Modulus of Elasticity (Steel)	146
Post-Tension Tendon Tensile Testing	185
Tensile Strength #3 - #8 Bar (ASTM A615/A706)	74
Tensile Strength #9 - #11 Bar (ASTM A615/A706)	90
Tensile Strength #14 - #18 Bar (ASTM A615)	Quote
Tensile Strength - Mechanical Splices #9 and Smaller (Cal 670)	185
Tensile Strength - Mechanical Splices #10 to #14 (Cal 670)	250
Tensile Strength - Mechanical Splices #18 (Cal 670)	Quote
Tensile Strength, Structural Steel (ASTM A370)	121

### *Miscellaneous*

Fire Proofing Density Test (ASTM E605)	\$69
Fiber Reinforced Polymer, Tensile (ASTM D3039)	520
Rebound Hammer Calibration	40
Material Preparation	40/hr
Relative Humidity Test (ASTM F2170)	40/kit
Concrete Vapor Emission Kits (ASTM F1869)	36/kit
Test Chamber and Water Spray Rack (ASTM E1105)	275/hour
Miscellaneous Charges	Various
Default Expense	Various

### TERMS AND CONDITIONS

All field services will be charged from portal to portal with the following minimum charges:

- A two-hour show-up charge will be applied to any service canceled the same day of service.
- A two-hour minimum charge will be applied to all field services.
- A four-hour charge will be applied to all field services requiring between two and four hours of work.
- A six-hour charge will be applied to all field services requiring between four and six hours of work.
- A eight-hour charge will be applied to all field services requiring between six and eight hours of work.
- Work in excess of eight hours up to twelve hours in a single day, will be charged in one-hour increments at 1.5 times the standard rate.
- Work in excess of twelve hours in a day will be charged in one-hour increments at 2.0 times the standard rate.

Work performed by field or laboratory personnel outside of normal business hours (6:30 AM – 5:00 PM) will be charged a premium on a case-by-case basis.

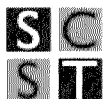
Reimbursables: SCST reserves the right to charge for services outside of the contract in the form of reimbursables. These items include, but are not limited to the following consumables: magnetic particle powder, ultrasonic couplant, concrete cylinder cans, etc. The following are also included: mileage, travel time, equipment rental, administrative time utilized for photocopying, distribution lists, express mailing, archive searches, etc.

Subcontracted services that are included on the Fee Schedule will be charged at those rates. Subcontracted services not included in our Fee Schedule will be charged at cost plus 20 percent. Per Diem charges will be applied to projects outside a 50-mile radius of our office. Mileage will be charged at the rate of 50 cents per mile for distances over 50 miles from the location of dispatch.

Invoices for all services completed or in progress will be submitted monthly. These invoices are due in full upon presentation to the client. Invoices outstanding over 30 days will be considered past due. A finance charge will be computed at the rate of 1.5 percent per month, which is an annual rate of 18 percent and charged on all past due accounts. If legal action is brought on delinquent accounts, the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs of collection.

Our professional engineering, geology, and inspection services are performed in accordance with the current standards of practice in the industry. No other warranty or representation, express or implied, is made or intended.

Should any services provided by SCST for this project become subject to state or federal prevailing wage requirements, SCST will be compensated for those services at prevailing wage rates, from the date these requirements become effective through completion of the project.



**SCST, Inc.**  
**2018 PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into at San Diego, California, by and between SCST, Inc. a California corporation, hereinafter referred to as "Consultant" and, City of Coachella, hereinafter referred to as "Client."

Client intends to employ SCST to provide Earthwork Observation, Compaction Testing, Special Inspection and Materials Testing Services for the ATP - Cycle 1 Project located in Coachella, California, hereinafter referred to as "Project."

Now, therefore, in consideration of the terms and conditions hereinafter set forth, the parties hereto agree as follows:

**1) Cooperation and Project Understanding**

(a) Consultant will render the professional services set forth in the Scope of Work contained in the Consultant's Proposal, which is attached hereto and incorporated into this Agreement. Client will compensate Consultant in accordance with said Proposal.

(b) If Client requires additional services, Client agrees that said additional services shall be paid for by Client at Consultant's fee schedule in effect at the time of the services, or as agreed between Client and Consultant. Additional services verbally requested by Client or by any representative of the Client for the Project shall be subject to all of the terms and conditions of this Agreement unless modified by an amendment or addendum to the Agreement, or a new agreement between the parties for the additional services. A written modification to the Agreement may be requested by either Consultant or Client, and if such a modification is requested, any additional services shall be provided only upon approval in writing by both parties to said modification.

(c) Client will make available to Consultant all relevant information in its possession regarding existing and proposed conditions of the Project site. This information shall include, but not be limited to, all plans, specifications, surveys, test data, and written reports by previous consultants that may pertain to the Consultant's scope of work. Client will immediately transmit to Consultant any new or revised information, which may have an effect on Consultant's services under this Agreement.

(d) It is acknowledged that opinions, recommendations, and advice that may be provided by Consultant will be based on information furnished by Client or other persons or entities retained by Client, and on information obtained by Consultant through Consultant's own investigation, testing, inspection, and observation of work being performed by others. Consultant shall not be responsible for any incorrect advice, judgment, or decision based on any inaccurate or incomplete information furnished by Client or Client's representatives, and Client will indemnify and hold harmless

Consultant against all claims, demands, or liability arising out of or contributed to by such information or lack thereof.

(e) It is also acknowledged that, unless specifically set forth in Consultant's Scope of Work in attached Proposal, Consultant does not direct, control, or supervise the work of other persons or entities on the Project other than those that may be directly retained as subcontractors by Consultant. (Business and Professions Code § 6703.1)

**2) Project Site**

(a) If applicable, the Client shall indicate to Consultant the property lines of the Project site and be responsible for the accuracy of any boundary markers.

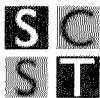
(b) The Client shall secure free and lawful access to the Project site for all necessary equipment and personnel of Consultant. Client shall notify any and all possessors of the project site that Client has granted Consultant free access to the Project site, and Client shall secure permission (and any permits) necessary to allow Consultant free access to the Project site at no charge to Consultant unless specifically agreed to otherwise in the Proposal attached hereto.

(c) If applicable, the Client shall take steps to see that the property is protected, on or off-site, including all landscaping, shrubs, and flowers. While Consultant will take all reasonable precautions to minimize any damage to the property, it will not be responsible for damage to lawns, shrubs, landscapes, walks, sprinkler systems, or underground utilities and installations caused by movement of earth or equipment.

(d) If applicable, the Client shall locate for Consultant and shall assume responsibility for the accuracy of Client's representations as to the locations of all underground utilities and installations. Consultant will not be responsible for damage by it to any such utilities or installations not so located, and any such damage by Consultant may, at Consultant's option, be repaired by Consultant and billed at cost plus 15% to Client.

(e) If applicable, Client shall notify Consultant of all locations where hazardous materials or wastes were stored, used, or disposed on the Project site.

(f) If applicable, Consultant agrees to backfill or adequately cover all open test holes made by it prior to leaving Project site unattended. Consultant agrees that all test holes will be backfilled upon completion of the job. However, Client may request test holes to remain open after completion of Consultant's work. In the event Client so requests, Client agrees to pay for all costs in connection with covering and backfilling said test holes at a later date, and Client shall indemnify and hold harmless Consultant for all claims, demands, and liabilities arising from its request.



### 3) Safety

Consultant will not be responsible for the general safety on the job or the safety of any equipment or individuals on the Project site other than its own personnel and the equipment under its direction.

### 4) Ownership of Documents

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by Consultant, as instruments of service, shall remain the property of Consultant. In the event Client defaults on payment for Consultant's services, Client agrees that all reports and other work furnished to Client or its agents will be returned upon demand and will not be used by Client for any purpose whatsoever. Consultant will retain all pertinent records relating to the services performed for a period of five years following submission of the report, during which period the records will be made available to the Client at all reasonable times.

### 5) Samples

Consultant, or a subcontracted laboratory, will retain all soil, rock, and concrete samples for thirty (30) days after the issuance of Consultant's report or notification to terminate work. If the Client desires extended storage, the Client shall notify Consultant prior to the expiration date of this period. Extended storage or transfer will be at Client's expense.

### 6) Professional Standard

Client recognizes the inherent risks associated with the construction of improvements to real property. Client further recognizes that there may be significant variation in site conditions or in the work inspected or materials tested by Consultant. Consultant is responsible for performing its services in accordance with the standard of care set forth in the following paragraph, but this does not relieve the contractor or subcontractor from responsibility for their own work.

Consultant's services consist of professional and technical advice and observation only. Consultant will be responsible only for its own data, interpretations, and recommendations, but shall not be responsible for the interpretations by others of the information developed. In the performance of its professional services, Consultant will proceed with work diligently with competent personnel, and will comply with that level of care and skill ordinarily exercised by reputable professional engineers, geologists, and special inspectors currently practicing under similar conditions in the same or similar localities. No warranty of any kind whatsoever, express or implied, is made or intended by Consultant, its employees or agents, in connection with the services provided under this Agreement.

### 7) Indemnification

To the fullest extent permitted by law, Client agrees to indemnify, defend, and hold harmless Consultant, its officers,

employees, and agents from any and all claims, damages, losses, and expenses, including reasonable attorney's fees and costs of litigation arising out of or resulting from the services to be provided under this Agreement. However, such indemnification shall not apply to the extent that any such claims, damages, losses, and expenses are due to the willful misconduct or sole negligence of Consultant.

### 8) Dispute Resolution

In an effort to resolve any conflicts that arise during the design or construction of the project or following completion of the project, the Client and Consultant agree that all disputes between them arising out of or relating to the Agreement shall be resolved in accordance with the following procedures:

(a) **Special Meeting.** The parties shall first attempt to resolve any difference by businesslike negotiations. Either the Client or Consultant may call a special meeting, which shall specify the nature of the dispute to be resolved. This meeting shall be held within 3 working days of a written request, and shall take place at the job site, Consultant's office, or such other location as shall be mutually agreed. The meeting shall be attended by representatives of Client, Consultant, and if necessary, other involved parties, who have authority to resolve the dispute. The parties shall make a good faith effort to resolve their differences at this meeting.

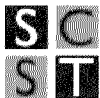
(b) **Mediation.** If the parties are not able to resolve the conflict through negotiation within 5 business days of the special meeting, the Client and Consultant agree that the dispute shall be submitted to nonbinding mediation unless mutually agreed in writing otherwise. This mediation shall be a prerequisite to either party pursuing further legal action, and no such legal action shall be initiated by either party until a good faith effort has been made by the parties to resolve their differences through the mediation process unless both parties agree to waive this mediation requirement. The costs of the mediation shall be equally shared by all involved parties.

### 9) Delays

Consultant will be excused for any delay in completion of this Agreement caused by acts of God, acts of Client or Client's employees or agents, inclement weather, labor trouble, acts of public utilities, public bodies or inspectors, extra work, failure of Client to make payments promptly, or other contingencies unforeseen by Consultant and beyond the reasonable control of Consultant.

### 10) Termination of Agreement

In the event that either party desires to terminate this Contract prior to completion of the Project, written notification of such intention to terminate must be tendered to the other party. In the event that Client notifies Consultant of such intention to terminate Consultant's services prior to completion, Consultant reserves the right to complete such



analysis and records as are necessary to place files in order, to dispose of samples, put equipment in order, and, where considered necessary to protect its professional reputation, to complete a report on the work performed to date. In the event that consultant incurs costs in Client's termination of this Agreement, a termination charge to cover such costs shall be paid by the Client.

In the absence of notification of termination, this Agreement shall continue in full force and effect until such time as Consultant has completed its services.

#### 11) No Third Party Beneficiaries

This Agreement is entered into solely for the benefit of Client and Consultant and in no way is intended to benefit or extend any right or interest to any third party. It is the intention of Client and Consultant that they are the sole beneficiaries to the rights and obligations arising herefrom, and any benefit to be derived by any third party is merely incidental to and unintended by the Agreement.

#### 12) Corporate Protection

It is intended by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject the Consultant's individual employees, officers, or directors to any personal legal exposure for the risks associated with this project. Therefore, notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted against the Consultant, a California corporation, and not against any of the Consultant's individual employees, officers or directors.

#### 13) Attorneys' Fees

In the event that either party becomes involved in litigation arising out of this Agreement or the interpretation or performance thereof, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and other non-reimbursable litigation expenses.

#### 14) Merger Clause

This Agreement, including the attached incorporated proposal, constitutes a final, complete, and total integration of any and all understandings between the parties. It supercedes all prior communications, understandings and agreements, whether oral or written.

Any subsequent change, alteration, addition, or modification must be mutually agreed upon, in writing, and signed by both parties.

#### 15) Notices

Any notice required or permitted under this Agreement may be given by ordinary mail at the address contained in this Agreement, but such address may be changed by written notice given by one party to the other from time to time. Notice shall be deemed received in the ordinary course of the

mail.

#### 16) Assignments

The rights and obligations of either party to this Agreement shall not be assigned or otherwise transferred without the prior written consent of the other party. Subject to the foregoing, each party to this Agreement, where applicable, binds itself, its partners, successors, executors, administrators, and assigns with respect to all covenants, conditions, and promises of this Agreement.

#### 17) Individual Responsibility

If Client is a corporation, the individual or individuals who sign this Agreement on behalf of Client warrant that they are duly authorized agents of Client.

#### 18) Invoices

Consultant will submit invoices to Client, at Consultant's option, either semi-monthly or upon completion of the services. Invoices for Consultant's services are due and payable upon receipt, and shall be considered past due if not paid within 30 calendar days of the due date. Invoices will show charges for different personnel and expense classifications. A more detailed separation of charges and backup data will be provided upon Client's request.

**A FINANCE CHARGE OF 1.5% PER MONTH, CALCULATED FROM THE INVOICE DUE DATE, WILL BE ASSESSED ON ANY INVOICES NOT PAID WITHIN 30 DAYS.**

#### 19) Disputed Invoices

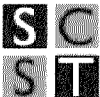
If the Client objects to any portions of an invoice, the Client shall so notify the Consultant in writing within 30 calendar days of receipt of invoice. The Client shall identify the specific cause of the disagreement and the amount in dispute, and shall pay that portion of the invoice not in dispute in accordance with the other terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within 11 days be direct negotiation between the parties shall be resolved in accordance with the Dispute Resolution provisions of this Agreement. Finance charges as stated above shall be paid by the Client on all disputed invoice amounts that are subsequently resolved in the Consultant's favor, calculated on the unpaid balance from the due date of the invoice.

#### 20) Previous Consultant Fees

Client agrees that any previous consultant retained to perform professional services that are the same or related to those for which this Agreement has been entered, has been or will be promptly paid in full by client. Client shall obtain full rights to use previous consultant's work product, if same is to be used by Consultant.

#### 21) Severability

If any term or provision of this Agreement should be found to be in violation of any law or ordinance, it shall be deemed





stricken from the Agreement, and the remainder of the Agreement shall remain in full force and effect.

**22) Governing Law and Jurisdiction**

This Agreement shall be governed by the law of the State of California, and jurisdiction for any disputes arising under this Agreement shall be brought in a court of competent jurisdiction in San Diego, County, California.

**23) Limitation of Liability**

CONSULTANT'S LIABILITY FOR DAMAGES DUE TO PROFESSIONAL NEGLIGENCE WILL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE TOTAL FEES RECEIVED BY CONSULTANT UNDER THIS AGREEMENT, OR THE AMOUNT OF \$50,000, WHICHEVER IS GREATER.

IT IS INTENDED THAT THIS LIMITATION APPLY TO ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES, INCLUDING ATTORNEY'S FEES AND EXPERT WITNESS FEES AND COSTS, RESULTING FROM OR RELATED TO THE PROJECT OR THIS AGREEMENT.