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21900 Colorado Avenue, P.O. Box 758, San Joaquin, CA 93660  
(559) 693-4311, (559) 693-2193 (fax), [www.cityofsanjoaquin.org](http://www.cityofsanjoaquin.org)

**NOTICE AND CALL OF SPECIAL MEETING AND AGENDA  
CITY OF SAN JOAQUIN CITY COUNCIL**

Notice is hereby given that the City Council of the City of San Joaquin will hold a special meeting beginning at **10:00 A.M.** on Wednesday, **June 28, 2023**, at the **San Joaquin Senior Center** 21991 Colorado Avenue (B), San Joaquin, CA 93660.

**MEMBERS OF THE PUBLIC MAY ATTEND THIS MEETING OR PARTICIPATE IN THE MEETING BY SUBMITTING WRITTEN COMMENTS AT CITY HALL OR BY EMAIL PRIOR TO THE MEETING AT [matthewf@cityofsanjoaquin.org](mailto:matthewf@cityofsanjoaquin.org)**

**ZOOM INFORMATION:**

<https://us02web.zoom.us/j/89938553905?pwd=YVQ2UkRkNlQyNElBS1RzSFpoVHhtQT09>

**MEETING ID: 899 3855 3905**

**PASSCODE: 687013**

**TELEPHONE NUMBER: 1-669-900-9128**

**The City Council welcomes you. All attendees are advised that pagers, cell phones, and any other communication devices should be powered off upon entering the Council meeting and to silence their devices until they speak.**

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The Council may consider and act on an agenda item in any order it deems appropriate. Actual timed items may be heard later but not before the time set on agenda. Persons interested in an item listed on the agenda are advised to be present throughout the meeting to ensure their presence when the items is called.

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For each agenda item considered by the Council there will first be a staff presentation followed by a presentation from the involved individuals. Public comments from those in attendance will then be taken. All comments will be limited to three minutes per person.

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**1. CALL TO ORDER - PLEDGE OF ALLEGIANCE – ROLL CALL**

Julia Hernandez  
Adam Flores  
Cristina Covarrubia  
Abel Lua  
Martha Mejia

**2. APPROVAL OF AGENDA**

**3. PUBLIC COMMENTS ON THIS AGENDA. THE SOLE BUSINESS TO BE CONDUCTED IS LISTED BELOW. MEMBERS OF THE PUBLIC WILL HAVE AN OPPORTUNITY TO ADDRESS THE CITY COUNCIL ON THE ITEM(S) LISTED:**

**4. NEW BUSINESS**

**A. Report and Recommendation**- Consideration and Approval of **Resolution No. 2023-25**, accepting an informal bid and awarding the contract to Salem Engineering, Inc. for construction testing and inspection services for Sutter Avenue Paving Improvements, Railroad to Manning, Federal Aid Project No. RSTPCML-5245(019) and authorizing the City Manager to execute the agreement. *(Enclosure P. 1 Action Item)*

**5. ADJOURN MEETING –**

**NOTICE OF ADA COMPLIANCE:** If you or anyone in your party needs reasonable accommodations to attend, or participate in, any City Council Meeting, please make arrangements by contacting the City Clerk's Office at City Hall 24 hours prior to the meeting Who can be reached by calling 693-4311 or by mail at P.O. Box 758, San Joaquin, CA 93660.

**NOTICE AVAILABILITY OF AGENDA MATERIALS:** Any writings or documents provided to a majority of the City Council regarding any items on this agenda will be made available for public inspection at the City Clerk's Office located at City Hall 21900 Colorado Avenue during normal business hours.

#### **CERTIFICATION OF POSTING**

I, **Matt Flood**, Acting City Clerk of the City of San Joaquin, do hereby declare that the foregoing agenda for the San Joaquin City Council Special Meeting of Wednesday, June 28, 2023 was posted at the following locations: City Hall, 21900 Colorado Avenue, San Joaquin Senior Center, 21991 Colorado Ave. (B) and US Post Office, 8667 Ninth Street on Tuesday June 27, 2023 at 10:00 A.M.

**\*\*NEXT REGULAR COUNCIL MEETING WILL BE HELD JULY 10, 2023\*\***

## STAFF REPORT

Date: June 28, 2023

TO: Mayor and Councilmembers

FROM: Mario Gouveia, City Engineer

REVIEWED BY: Elizabeth Nunez City Manager

### **SUBJECT:**

Resolution No. 2023-25, Accepting Informal Bid and Awarding Contract to SALEM Engineering Group, Inc. for Construction Testing & Inspection Services for Sutter Avenue Paving Improvements; Railroad to Manning, Federal-Aid Project No. RSTPCML-5245(019) and Authorizing the City Manager to Execute the Agreement

### **RECOMMENDATION:**

1. Award a contract for the Construction Testing & Inspection Services for Sutter Avenue Paving Improvements; Railroad to Manning, Federal-Aid Project No. RSTPCML-5245(019) in the amount of \$6,765.00.
2. Authorize the City Manager to execute an agreement with SALEM Engineering Group, Inc. for Construction Testing & Inspection Services

### **BACKGROUND:**

On April 10, 2023 the City of San Joaquin awarded a Construction Contract to Terra West Construction, Inc. for construction of the Sutter Avenue Paving Improvements; Railroad to Manning, Federal-Aid Project No. RSTPCML-5245(019). The project is now ready to begin construction and soil compaction and materials testing is a crucial step in the construction process. By conducting compaction and materials testing, it can be determined that subgrade, base and pavement materials have been constructed in accordance with the approved construction plans.

### **DISCUSSION:**

Three geotechnical firms were contacted to submit an informal bid to perform the requested services. The City received the following two bids:

SALEM Engineering Group, Inc.	\$6,765.00
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Krazan & Associates, Inc.	\$33,890.00
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TECHNICON Engineering Services did not submit a bid because their lab is not Caltrans certified. Federally funded projects administered by Caltrans require that the lab and technicians are Caltrans Certified.

Upon review of the submitted bids it has been determined that SALEM Engineering Group, Inc. is the lowest responsive/responsible bidder. SALEM Engineering, Inc. has an extensive background in providing geotechnical engineering, including compaction and materials testing. Therefore, Staff is recommending the City award SALEM Engineering, Inc. a contract to conduct compaction and materials testing.

**FISCAL IMPACT:**

Compaction and materials testing for Sutter Avenue Paving Improvements; Railroad to Manning, Federal-Aid Project No. RSTPCML-5245(019) will be funded using a CMAQ Grant with a Local Match using Toll Credits.

**ATTACHMENTS:**

Resolution 2023-25  
SALEM Engineering Inc. Proposal  
Krazan & Associates Proposal

**RESOLUTION No. 2023-25**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN  
ACCEPTING INFORMAL BID AND AWARDING CONTRACT TO SALEM ENGINEERING,  
INC. FOR CONSTRUCTION TESTING & INSPECTION SERVICES FOR SUTTER AVENUE  
PAVING IMPROVEMENTS; RAILROAD TO MANNING, FEDERAL-AID PROJECT NO.  
RSTPCML-5245(019) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE  
AGREEMENT**

**WHEREAS**, on May 16, 2023 the City issued an Informal Bid Request to three Geotechnical Firms for Compaction and Materials Testing for the Sutter Avenue Paving Improvements; Railroad to Manning, Federal-Aid Project No. RSTPCML-5245(019); and

**WHEREAS**, the project will consist of compaction and materials testing for the unpaved travel lane of Sutter Avenue in the City of San Joaquin; and

**WHEREAS**, the following two informal bids for the project were received:

SALEM Engineering Group, Inc.      \$6,765.00

Krazan & Associates, Inc.              \$33,890.00

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN JOAQUIN RESOLVES** upon the recommendation of the City Engineer that the Compaction and Materials Testing for the Sutter Avenue Paving Improvements; Railroad to Manning, Federal-Aid Project No. RSTPCML-5245(019) project be awarded to: SALEM Engineering Group, Inc. 4729 W. Jacquelyn Avenue, Fresno, California 93722 in the amount of six thousand seven hundred sixty-five dollars and zero cents (\$6,765.00).

The foregoing resolution was adopted at a special meeting of the City Council of the City of San Joaquin the 28<sup>th</sup> of June, 2023 and passed at said meeting by the following vote:

AYES:

NOTES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

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Julia Hernandez, Mayor

ATTEST:

I, Matt Flood, Acting City Clerk of the City of San Joaquin, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a special meeting of said City Council, held at the San Joaquin Council Chambers on June 28<sup>th</sup>, 2023.

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Matt Flood, Acting City Clerk

May 25, 2023

**Proposal No. P1-623-0811**

Ms. Elizabeth Nunez  
**City of San Joaquin**  
21900 Colorado Avenue  
San Joaquin, CA 93660

Phone: (661) 327-1436  
Fax: (661) 377-0067  
Email: [elizabethn@cityofsanjoaquin.org](mailto:elizabethn@cityofsanjoaquin.org)

Subject: **PROPOSAL FOR CONSTRUCTION TESTING & INSPECTION SERVICES**  
SUTTER AVENUE PAVING IMPROVEMENTS  
FEDERAL-AID PROJECT NO. RSTPCML-5245(019)  
SUTTER AVENUE BETWEEN RAILROAD AVENUE AND MANNING AVENUE  
SAN JOAQUIN, CALIFORNIA

Dear Ms. Nunez:

SALEM Engineering Group, Inc. (SALEM) is pleased to submit this Proposal and Fee Estimate to conduct Construction Testing & Inspection Services for the Sutter Avenue Paving Improvements Federal-Aid Project No. RSTPCML-5245(019) at the subject site located in San Joaquin, California.

## **1.0 PROJECT DESCRIPTION**

It is understood that the site development will include improvements to existing roadway.

## **2.0 PURPOSE**

The purpose of the Construction Testing and Inspection is to confirm that the proposed building and associated improvements are constructed in accordance with the approved plans and specifications.

It should be noted that a qualified soil engineer's representative should be present at the site during site preparation to observe site clearing, preparation of exposed surfaces after clearing, and placement, treatment and compaction of fill material. These observations should be supplemented with periodic compaction tests to establish substantial conformance with the engineering recommendations. Further, moisture content of the building pad (footings and slab subgrade) should be tested immediately prior to concrete placement.

## **3.0 SCOPE OF SERVICES**

Services to be provided in conjunction with the Construction Testing and Inspection may include a combination of field observation and compaction testing, soil sampling, and laboratory testing. We estimate that required tests and inspections during site preparation activities will include engineered fill observations and compaction testing, pavement area subgrade and aggregate base compaction tests, and trench backfill compaction tests.

It is noted that there is no project Geotechnical Report for this project. SALEM's scope of services does not include, and hereby specifically excludes, assuming geotechnical engineer of record for this project. SALEM will assess earthwork operations for compliance to the requirements of the project plans and specifications. SALEM will provide field data, observations, and other applicable information to the client, with the intent of transmittal to the engineer of record to provide specific recommendations for construction related items not specifically identified in the project plans and specifications that may develop over the course of construction.

### 3.1 Field Observations, Special Inspection and Testing

#### Soil Compaction Testing

Measure the compaction of fill soils for compliance to recommended minimum percentages in building pads, trenches, roadways, and other backfilled areas utilizing the nuclear gage or tube method of testing. Perform compaction testing of aggregate base material in paved areas.

### 3.2 Laboratory Testing

The laboratory-testing program would incorporate physical tests for the determination of soil moisture and density. The following tests would likely be conducted:

- ☐ Laboratory Maximum Density/Optimum Moisture Determination
- ☐ Sieve Analysis (*if needed*)
- ☐ Expansion Index (*if needed*)

### 3.3 Compaction Reports

Compaction testing reports will be submitted on a monthly basis. The reports will document our field and laboratory activities, including field observation and compaction testing. The report would be prepared and signed by a California Licensed Civil Engineer.

## 4.0 SCHEDULE AND FEES

### 4.1 Schedule

Compaction reports will be submitted on a monthly basis, and at the completion of the project. To expedite your construction effort, verbal results could be made, as data become available.

SALEM requires a minimum 48-hour notice for dispatch to perform inspections and field testing. We will make a diligent effort to schedule inspectors with shorter notice. The client is advised to inform their contractor(s) of this requirement to prevent delays due to improper scheduling.

### 4.2 Fees

Our fees for performing the aforementioned Scope of Services will be billed on time and material basis in accordance with the rates and unit test costs included within the attached Standard Field and Laboratory Fee Schedule (see Attachment A). Our Budgetary Fee Estimate for performing the aforementioned Scope of Services is **\$6,765.00** based upon the assumed durations included within our Project Fee Estimate (see Attachment B). Our work will be billed for on-site time with a minimum of two (2) hours per visit, with increments of two (2) hours thereafter. Work hours over 8 hours, work that begins or ends outside normal working hours (normal working hours are 7:00 AM to 6:00 PM), work that starts or ends during Second Shift work hours (work that commences after 2:00 PM or before 4:00 AM during any twenty-four (24) hour period commencing at 12:01 AM), and on Saturdays will be billed at 1.5 times the rates shown herein at the above noted minimum and increments. Work hours in excess of 12 hours per day, Second Shift or Saturday work hours in excess of 8 hours per day, and work on Sundays/Holidays will be billed at 2.0 times the rates shown herein at the above noted minimum and increments. Our proposal assumes offsite fabrication will be performed at facilities within 50 miles of the Salem facility the proposal is based upon. Any offsite fabrications beyond the 50 miles will incur additional costs including but not limited to additional fuel and vehicles charges, travel time and airfare costs, per diem, and/or sub-contractor markup fees.

SALEM must be informed in writing and prior to full execution of the contract if the subject project is, all or in part, mandated under California Prevailing Wage and/or Davis Bacon jurisdiction. The Fee Estimate (Attachment B) includes California Prevailing Wage rates. In the event that the subject project is determined to be, all or in part, classified as a Davis Bacon project, including but not limited to any and all Off-Site work, the noted Fee Schedule (Attachment A) and Fee Estimate (Attachment B) shall be considered void.

Our Budgetary Fee Estimate is merely provided for budgeting and planning purposes, since our work is highly dependent upon the contractor and contractor's performance. The Budgetary Fee Estimate does not imply a maximum contract amount, but only the extension value of SALEM unit prices at the time of the initial request for services. Cost estimates associated with construction testing and inspection services are provided in good faith based upon construction drawings and schedules provided by the client and do not include client or contractor requested additional services, added time, jobsite cancellations, retests and/or re-inspections. If no construction documents are provided by the client for SALEM to utilize as a basis for our Budgetary Fee Estimate, SALEM will in good faith, provide a cost estimate based upon our experience with previously conducted projects with similar scopes of work. A more accurate estimate can be provided when a construction schedule becomes available.

Our invoices will be submitted on a monthly basis and will be billed in accordance with the rates and unit test costs included within the attached Standard Field and Laboratory Fee Schedule (see Attachment A). The Project Fee Estimate (Attachment B) assumes that the durations outlined therein will not be exceeded as scheduled by the general contractor. In the event that the project plans or geotechnical report require supplemental recommendations, our firm can provide the recommendations on an hourly basis based upon the engineering rates noted within Attachment A. Structural Observations are excluded from this proposal.

## **5.0 QUALIFICATION**

SALEM is comprised of over 78 full-time Professional Engineers, Geologists, Environmental Professionals, Certified Technical staff, and qualified support staff. SALEM is a competent and accessible consulting engineering firm that solves challenges in an efficient, team oriented, and timely manner. Over the past ten years, SALEM has specialized in geotechnical engineering, environmental engineering, and most importantly construction testing and inspection services for various projects located throughout the state of California and the western United States. With each successful project completion, we have proven that high quality service need not be sacrificed while providing cost-effective engineering services. We have full capabilities to perform virtually all aspects of geotechnical engineering services, including initial soils and foundation investigations, geologic/seismic hazards studies, and environmental site assessments.

Our firm includes multi-disciplined Professional Engineers, special inspectors, and administrative staff that strive to provide efficient and dependable service. In addition to our field and office staff, our local Materials Laboratories include state of the art equipment utilized for testing of construction materials such as soils, concrete, aggregates, bituminous products, masonry, steel and other materials. SALEM is certified by Division of State Architect (DSA), Laboratory Evaluation and Acceptance Program (LEA) and the City of Los Angeles Department of Building and Safety. Our firm is also an active participant in the Cement and Concrete Reference Laboratory (CCRL) and AASHTO Material Reference Laboratory (AMRL) proficiency sample programs and laboratory inspection process. Our procedures, equipment, and personnel qualifications conform to the requirements as outlined in ASTM E-329.

All annually-required calibrations on laboratory equipment are performed by an outside agency and by SALEM Engineering's internal quality assurance program.

SALEM maintains licensure as professional engineer in California, Arizona, Nevada, Oregon, Washington, New Mexico, Texas, Utah, Alaska, Colorado, Hawaii, and Idaho. SALEM can provide responsive and reliable geotechnical engineering, environmental engineering, and construction testing and inspection services anywhere within the western united states at competitive pricing. The recommendations presented within our reports are

made with careful consideration to applicable building codes and standards, as well as economic and cost-saving components to facilitate design and construction. As indicated by the sheer volume of retail projects completed for developers and large retail chains directly, SALEM has proven itself well-versed with individual design and development procedures specific to each client.

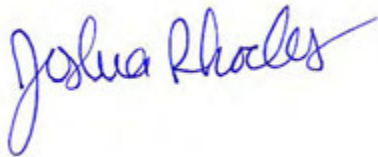
## 6.0 INSURANCE QUALIFICATIONS

SALEM maintains professional insurance to meet the requirements of our clients. In addition to our Professional Liability coverage of \$2,000,000, SALEM also carries General Liability of \$2,000,000 per occurrence and \$4,000,000 aggregate, and Umbrella Liability of \$5,000,000 each incident and \$5,000,000 aggregate. SALEM's Workers Compensation coverage is in the amount of \$1,000,000 per accident and our Commercial Automobile coverage is in the amount of \$1,000,000 per combined single limit.

## 7.0 CLOSING

We appreciate the opportunity to submit this proposal for your consideration and look forward to working with you on this project. Should you have questions regarding this proposal, please contact the undersigned at (559) 271-9700.

Respectfully Submitted,  
**SALEM Engineering Group, Inc.**



Joshua S. Rhodes, PE, QSD/QSP  
Vice President of Operations &  
Director of Engineering Services  
RCE No. 73231 | [Josh@saalem.net](mailto:Josh@saalem.net)

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**ATTACHMENT A**  
**PREVAILING WAGE FIELD AND LABORATORY FEE SCHEDULE**

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**Soils, Aggregate, and Asphalt Inspection and Testing**

Soils/Asphalt Technician	\$95.00 per hr.
Max Density/Opt. Moisture Test - ASTM D1557	\$185.00 per ea.
Max Density/Opt. Moisture Test - ASTM D698	\$185.00 per ea.
Max Density/Opt. Moisture Test - CAL216	\$185.00 per ea.
R-Value Test	\$310.00 per ea.
Sieve Analysis	\$135.00 per ea.
Sand Equivalent	\$120.00 per ea.
Expansion Index	\$205.00 per ea.
Plasticity Index	\$205.00 per ea.
Asphalt Maximum Density Test	\$305.00 per ea.
Asphalt Concrete Core Density	\$60.00 per ea.
Asphalt Gradation and Oil Extraction	\$375.00 per ea.
Asphalt Coring (one person crew)	\$185.00 per hr.

**Concrete Inspection and Testing**

ACI Concrete Sampling Technician	\$100.00 per hr.
ICC Inspector and Proof-Load Testing	\$110.00 per hr.
6"x12" Concrete Cylinder Compression Test	\$130.00 per set of 4
4"x8" Concrete Cylinder Compression Test	\$130.00 per set of 5
Concrete Cylinder Compression Test (ea. additional)	\$35.00 per sample
Reinforcing Steel Testing (Bend/Yield/Elongation)	\$135.00 per sample
Floor Flatness Testing	\$825.00 per day
Vapor Emission Test Kit	\$50.00 per kit
Relative Humidity Test Kit	\$80.00 per kit
Floor Slip and Gloss Testing	\$835.00 per trip
Concrete Coring (one person crew)	\$185.00 per hr.

**Structural Masonry Inspection and Testing**

ICC Inspector	\$110.00 per hr.
DSA Masonry Inspector	\$135.00 per hr.
Grout Compression Test	\$130.00 per set of 4
Mortar Compression Test	\$130.00 per set of 4
Masonry Prism Compression Test	\$245.00 per set of 3
Masonry Block Compression Test	\$385.00 per set of 3
Masonry Block Compliance Testing (ASTM C90)	\$450.00 per set
Masonry Core Shear Test	\$245.00 per set
Masonry Coring (two person crew)	\$285.00 per hr.

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**PREVAILING WAGE FIELD AND LABORATORY FEE SCHEDULE**


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**Structural Steel Inspection**


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Shop Welding Inspector	\$85.00 per hr.
Field Welding/Bolting Inspector	\$115.00 per hr.
Ultrasonic Testing	\$120.00 per hr.
High Strength Bolt Tensile/Wedge/Hardness	\$800.00 per set of 3

**Shear Wall and Roof Inspection**


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ICC Inspector or Registered Engineer	\$125.00 per hr.
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**Engineering and Administration**


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Professional Engineer Review	\$150.00 per hr.
Project Manager	\$130.00 per hr.
Qualified SWPPP Developer	\$130.00 per hr.
Qualified SWPPP Practitioner	\$120.00 per hr.
Administrative Support	\$55.00 per hr.

**Vehicle, Equipment, and Sample Pickup Charges**


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Vehicle/Equipment/Trip Fee	\$70.00 per trip
Sample Pickup and Delivery	\$95.00 per trip

## General Terms:

- 1) SALEM invoices will be submitted on a monthly basis and will be billed on a time-and-materials basis in accordance with the above fees.
- 2) SALEM requires a minimum 48-hour prior notice for scheduling inspectors and/or technicians.
- 3) Inspection charges start at the scheduled show up time at the job site. There will be a minimum two (2) hour charge, with two (2) hour increments billed thereafter for any SALEM personnel present on a job site, batch plant, fabrication shop, etc.
- 4) Normal working hours are from 7:00 AM to 6:00 PM. Work performed over 8 hours per day, outside normal working hours, and on Saturdays will be billed at 1.5 times the above rates at the above minimum and increments; Work in excess of 12 hours per day, on Sundays, Holidays, or over 8 hours on Saturday will be billed at 2.0 times the above rates at the above minimum and increments.
- 5) Work performed during Second Shift work hours (work that commences after 2:00 PM or before 4:00 AM during any twenty-four (24) hour period commencing at 12:01 AM) will be billed at 1.5 times the above rates; Second Shift work hours in excess of 8 hours per day will be billed at 2.0 times the above rates.

**ATTACHMENT B - PREVAILING WAGE RATES  
PROJECT FEE ESTIMATE (ASSUMED DURATIONS)**

<b>PROJECT FEE SUMMARY (SEE BELOW BREAKDOWN)</b>	
On-Site Earthwork Observation & Compaction Testing:	\$5,760.00
Engineering Review and Report Preparation:	\$1,005.00
<b>TOTAL ESTIMATED FEE:</b>	<b>\$6,765.00</b>

<b>On-Site Earthwork Observation &amp; Compaction Testing:</b>	<b>No. Units or Days</b>	<b>Hours Per Day</b>	<b>Unit/ Hourly Rate</b>	<b>Fees</b>
Paved Area Subgrade Testing	10	2	\$95.00	\$1,900.00
Paved Area Aggregate Base Testing	10	2	\$95.00	\$1,900.00
Soil Maximum Density Tests	1	-	\$185.00	\$185.00
Aggregate Base Maximum Density Tests	1	-	\$185.00	\$185.00
Soil and Aggregate Base Sample Pickup	2	-	\$95.00	\$190.00
Vehicle/Equipment/Trip Fee	20	-	\$70.00	\$1,400.00
<b>Total Estimated Fees This Scope:</b>				<b>\$5,760.00</b>

<b>Engineering Review and Report Preparation:</b>	<b>No. Units or Days</b>	<b>Hours Per Day</b>	<b>Unit/ Hourly Rate</b>	<b>Fees</b>
Professional Engineer Review	3	-	\$150.00	\$450.00
Project Manager	3	-	\$130.00	\$390.00
Clerical Staff (Report Preparation)	3	-	\$55.00	\$165.00
<b>Total Estimated Fees This Scope:</b>				<b>\$1,005.00</b>

## CONTRACT

This Agreement is between **City of San Joaquin**, hereinafter referred to as **CLIENT**, and **SALEM Engineering Group Inc.**, hereinafter referred to as **CONSULTANT**, for **Construction Testing and Inspections Services** to be provided by **CONSULTANT** for the **Sutter Avenue Paving Improvements Federal-Aid Project No. RSTPCML-5245(019)** located at **Sutter Avenue from Railroad to Manning in San Joaquin, California**. **CONSULTANT** will render these services and **CLIENT** will compensate **CONSULTANT** in accordance with our proposal **P1-623-0811** dated, **May 25, 2023**, which is incorporated in full by this reference, including any exhibits or attachments noted in the proposal. **CLIENT** acknowledges that the proposal represents an estimate and approximation of the services to be provided and the costs associated therewith; neither payment nor services are limited by the proposal, which is **not** a maximum contract amount.

### 1. Services

**CONSULTANT** will perform services under this agreement as an independent contractor. The **CLIENT** recognizes the inherent risks connected with construction. **CONSULTANT**'s services under this Agreement include only those services specified in the proposal. **CLIENT** expressly releases any claim against **CONSULTANT** relating to any additional services that **CONSULTANT** recommended, but that **CLIENT** either did not authorize or instructed **CONSULTANT** not to perform. Where applicable, observations and standardized sampling, inspection and testing procedures employed by **CONSULTANT** will indicate conditions of materials and construction activities only at the precise location and time where and when services were performed. **CLIENT** recognizes that actual conditions at the subject property, or where applicable, conditions of materials and construction activities at other locations, may vary from those measured or observed by **CONSULTANT** when performing the services, and that conditions at one location and time do not necessarily indicate the conditions of apparently identical material(s) at other locations and times. Services of **CONSULTANT**, even if performed on a continuous basis, should not be interpreted to mean that **CONSULTANT** is observing, verifying, testing or inspecting all materials on the project. **CONSULTANT** is responsible only for those data, interpretations, and recommendations based solely on information available to **CONSULTANT** and will only be valid as of the date of observation. Furthermore, where applicable, **CONSULTANT** is only responsible for those data, interpretations, and recommendations regarding actual materials and construction activities observed, sampled, inspected or tested. **CONSULTANT** will not be responsible for other parties' interpretations or use of any information developed by **CONSULTANT**. However, **CONSULTANT** may make certain inferences based upon the information derived from these procedures to formulate professional opinions regarding conditions in other areas. **CLIENT** shall retain the responsibility for determining and scheduling the required tests and/or inspections. No claims for loss, damages or injury shall be brought against **CONSULTANT** by **CLIENT** or any third-party for testing and inspection services not performed due to the **CLIENT** or any other third-party failing to schedule the **CONSULTANT**. **CONSULTANT**'s work shall not include determining, supervising or implementing the means, methods, techniques, or procedures of construction. **CONSULTANT** shall not be responsible for job site safety or the evaluating and reporting of job conditions concerning health, safety or welfare of other parties.

### 2. Standard of Care

**CONSULTANT** will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of the profession practicing in the same or similar locality. It is understood that no warranty, either expressed or implied, is provided.

### 3. Site Access and Site Conditions

**CLIENT** will grant or obtain free access to the subject property for all equipment and personnel necessary for **CONSULTANT** to perform the work set forth in this Agreement. **CLIENT** will notify any and all occupants of the subject property that **CLIENT** has granted **CONSULTANT** free access to the subject property. **CLIENT** will furnish or cause to be furnished such reports, data, studies, plans, specifications, documents, and other information regarding surface and subsurface conditions required by **CONSULTANT** for proper performance of its services. **CONSULTANT** shall be entitled to rely upon **CLIENT**-provided documents and information in performing the services required under this Agreement. However, **CONSULTANT** assumes no responsibility or liability for their accuracy or completeness. **CLIENT**-provided documents will remain the property of the **CLIENT**. The **CLIENT** is responsible for accurately delineating the locations of all subterranean structures and utilities. **CONSULTANT** will take reasonable precautions to avoid known subterranean structures, and the **CLIENT** waives any claim against **CONSULTANT**, and agrees to defend, indemnify, and hold **CONSULTANT** harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, **CLIENT** agrees to compensate **CONSULTANT** for any time spent or expenses incurred by **CONSULTANT** in defense of any such claim, with compensation to be based upon **CONSULTANT**'s prevailing fee schedule and expense reimbursement policy.

**CLIENT** hereby warrants that if **CLIENT** knows or has any reason to assume or suspect that hazardous materials/waste may exist at the subject property, **CLIENT** shall furnish or cause to be furnished to **CONSULTANT** all documents and information known to **CLIENT** that relate to the identity, location, quantity, nature or characteristics of the hazardous condition, material, or waste at, on, or under the subject property. **CONSULTANT** agrees to notify **CLIENT** when unanticipated hazardous materials or suspected hazardous materials are encountered. **CLIENT** agrees to make any disclosures required by law to the appropriate governing agencies regarding known releases of hazardous materials/wastes. **CONSULTANT** and **CLIENT** agree that the discovery of unanticipated hazardous materials/wastes constitutes a changed condition mandating a renegotiation of the scope-of-work or termination of services. **CONSULTANT** and **CLIENT** agree that the discovery of unanticipated hazardous materials may make it necessary for **CONSULTANT** to take immediate measures to protect health and safety. **CLIENT** agrees to compensate **CONSULTANT** for any equipment decontamination or other costs incidental to the discovery of unanticipated hazardous materials/wastes. Contaminated consumables will be disposed of and replaced at **CLIENT**'S expense. **CLIENT** also agrees to hold **CONSULTANT** harmless for any and all consequences of disclosures made by **CONSULTANT** which are required by governing law. In the event the project site is not owned by **CLIENT**, the **CLIENT** recognizes that it is the **CLIENT**'S responsibility to inform the subject property owner of the discovery of unanticipated hazardous materials/wastes or suspected hazardous materials/wastes. Notwithstanding any other provision of the Agreement, **CLIENT** waives any claim against **CONSULTANT**, and to the maximum extent permitted by law, agrees to defend, indemnify, and hold **CONSULTANT** harmless from any claim, liability, and/or defense costs for injury or loss arising from **CONSULTANT**'S discovery of unanticipated or suspected hazardous materials/wastes including any costs created by delay of the project and any cost associated with possible reduction of the subject property's value.

### 4. Hazardous Materials Risks

On projects relating to efforts to ascertain the presence or absence of hazardous substances or underground tanks, the level of effort may range from very limited observation and inquiry to extensive investigation and testing. The level of uncertainty with respect to opinions reached on such projects will vary, depending on the extent of the investigation, but some level of uncertainty will exist in every project. **CLIENT** recognizes that **CONSULTANT**'S failure to detect the presence of hazardous materials/wastes at a site, even though hazardous materials may be assumed or expected to exist, through the use of appropriate and mutually agreed upon sampling techniques, does not guarantee that hazardous materials do not exist at the site. Similarly, **CLIENT** recognizes that **CONSULTANT**'S subsurface explorations may not encounter hazardous materials/wastes at a site, which may later be impacted by hazardous materials/wastes due to natural phenomena or human causes. Where applicable, the **CLIENT** should recognize that any assessment services performed in support of this Agreement shall not be considered and/or construed as a comprehensive site characterization. The findings and conclusions in such reports will be predicated on the information obtained through conducting the services outlined in the written scope-of-work. It should also be recognized that the services performed should not be interpreted as a statistical evaluation of the subject property, but are rather intended to provide a preliminary indication of impacts to the subject property from the possible usage, generation, or releases of hazardous materials/wastes. If no significant indicators of the presence of contaminants are encountered during performance of **CONSULTANT**'S services, this does not preclude the presence of contaminants on the subject property. A statistical

evaluation of the subject property would include a comprehensive sampling strategy and laboratory analysis of samples collected to provide a basis for estimating the potential for the presence of contaminants with a numerical confidence value. The services shall only be deemed conclusive with respect to the tasks performed and the information obtained. No guarantee of the results of the services is implied within this contract. CLIENT agrees to waive any claim against CONSULTANT and agrees to defend, indemnify, and hold CONSULTANT harmless from claims or liability for injury or loss arising from CONSULTANT'S inability to detect the presence of hazardous materials/hazardous wastes through techniques commonly employed for this purpose.

#### **5. Hazardous Materials Generation/Disposal**

The CLIENT is considered the owner of contaminated materials and/or investigation-derived wastes that may be generated during CONSULTANT'S subsurface exploration or monitoring activities including, but not limited to, contaminated water or soil. It is understood and agreed that, unless specifically negotiated in writing, CONSULTANT is not, and has no responsibility as, a handler, generator, operator, treater or storer, transporter or disposer of hazardous or toxic substances found or identified at the subject property, and that CLIENT shall undertake, or arrange for, either directly or indirectly through subcontractors, the handling, removal, treatment, storage, transportation and disposal of hazardous materials/wastes or constituents thereof found or identified at the subject property. The costs associated with characterization and disposal of investigation-derived wastes shall be the sole responsibility of the CLIENT.

#### **6. Samples**

All samples will be disposed of or destroyed upon completion of testing unless CONSULTANT is otherwise advised. Upon written request, CONSULTANT will deliver samples to the CLIENT, or will store them for a period not to exceed 60 days for an agreed upon storage fee.

#### **7. Risk Allocation**

Many risks potentially affect CONSULTANT by virtue of entering into this Agreement to perform professional engineering services on behalf of CLIENT. The principal risk is the potential for human error by CONSULTANT. In order to obtain a lower fee from CONSULTANT, among other benefits, and in order for CONSULTANT to reduce its residual risk created by providing services to CLIENT, the CLIENT agrees to limit any and all claims for damages, costs of defense or other expenses or claims of liability or damages of whatever type, which are sought to be levied against CONSULTANT as the result of alleged negligent acts, errors and omissions on CONSULTANT'S part, such that the total aggregate liability of CONSULTANT to the CLIENT will not exceed CONSULTANT'S total fee for services rendered on this project or \$5,000, whichever is greater. CLIENT and CONSULTANT shall allocate certain of the other risks so that, to the fullest extent permitted by law, CLIENT shall limit CONSULTANT's total aggregate liability to all the parties, including contractors, subcontractors of all tiers, materialmen, and others involved in the CLIENT's project to the greater of \$10,000 or the total compensation received from CLIENT by CONSULTANT for services rendered on this project. CLIENT understands that dollar limits higher than those indicated may be available. If CLIENT wishes to negotiate other limits, and the resulting impact on CONSULTANT's retained risk and fee, CLIENT shall notify CONSULTANT in writing. If CLIENT fails to notify CONSULTANT in writing prior to accepting this Agreement, through signature or, without signature, by verbally or in writing authorizing CONSULTANT to commence services, CLIENT shall be deemed to have accepted the limits indicated above. Limitations on liability and indemnities in this Agreement are business understandings between the parties voluntarily and knowingly entered into, and shall apply to all theories of recovery including but not limited to, breach of contract, warranty, tort (including negligence), strict or statutory liability, or any other cause of action, except for willful misconduct or gross negligence. The parties also agree that CLIENT will not seek damages in excess of limitations indirectly through suits with other parties who may join CLIENT as a third party, nor by an award or attorney's fees and costs to the prevailing party in excess of the aggregate liability agreed upon herein by the parties. Both CLIENT and CONSULTANT agree that they will not be liable to each other, under any circumstances, for special, indirect, consequential or punitive damages arising out of or related to this Agreement. This provision takes precedence over any other conflicting provisions of this agreement.

#### **8. Insurance**

SALEM maintains professional insurance to meet the requirements of our clients. In addition to our Professional Liability coverage of \$2,000,000, SALEM also carries General Liability of \$2,000,000 per occurrence and \$4,000,000 aggregate, and Umbrella Liability of \$5,000,000 each incident and \$5,000,000 aggregate. SALEM's Workers Compensation coverage is in the amount of \$1,000,000 per accident and our Commercial Automobile coverage is in the amount of \$1,000,000 per combined single limit.

#### **9. Claims by CLIENT**

In the event the CLIENT makes a claim or brings any action against CONSULTANT for any act arising out the performance of these services, and the CLIENT fails to prove such claim or action, then the CLIENT shall pay all legal and other related costs and expenses incurred by CONSULTANT in defense of such claim or action.

#### **10. Assignments**

Neither party to this Agreement shall assign its rights, duties, and obligations hereunder without the prior written consent of the other party.

#### **11. Payment**

CLIENT will pay CONSULTANT the lump sum amount indicated in the proposal or, if no lump sum amount is indicated, in accordance with CONSULTANT'S Fee Schedule rates as included in the proposal and its attachments. CLIENT is responsible for payment of all fees in excess of SALEM's original estimate regardless of the issuance of an approved change order. Invoices will be submitted to CLIENT by CONSULTANT, and will be due and payable upon receipt. If CLIENT objects to all or any portion of any invoice, CLIENT will so notify CONSULTANT in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid in full.

Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. CLIENT is advised that invoice payment may be made via check, wire transfer, or credit card payment. If CLIENT chooses to render payment via credit card, CLIENT is hereby notified that a credit card surcharge in the amount of 3% of the invoice amount will be added to the payment amount and CLIENT is responsible for payment of the surcharge percentage at the time of payment. An administrative fee of 1.5% per month will be included for invoices over 30 days, excluding any portion of the invoiced amount in dispute and resolved in favor of CLIENT. All time spent and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount will be paid by the CLIENT to CONSULTANT, per CONSULTANT'S current fee schedule. In the event CLIENT fails to pay CONSULTANT within sixty (60) days after invoices are rendered, CLIENT agrees that CONSULTANT will have the right to consider the failure to pay CONSULTANT'S invoice as a material breach of this Agreement and CONSULTANT will have the right to stop all current work and withhold letters, reports, or any verbal consultation until the invoice is paid in full. If the CLIENT requests back-up data or changes to the format of the standard invoice, an administrative fee of \$200 per invoice may be charged plus \$5 per copy of back-up data.

CLIENT understands, acknowledges, and agrees that any failure or refusal by CLIENT to make payment to CONSULTANT in accordance with the provisions of this Agreement is a material breach of the Agreement, and is sufficient grounds for CONSULTANT to cease performance (including, but not limited to, refusing to transmit or provide reports or other deliverables to the CLIENT pending payment) under the Agreement and/or to terminate this Agreement in

accordance with the Termination provisions stated herein. CLIENT further understands, acknowledges, and agrees that any failure or refusal by CLIENT to approve additional work (or change order) is sufficient grounds for CONSULTANT to cease performance (including, but not limited to, refusing to transmit or provide reports or other deliverables to the CLIENT pending approval) under the Agreement and/or to terminate this Agreement in accordance with the Termination provisions stated herein.

## 12. Termination

This Agreement may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this Agreement or in the event of substantial failure of performance by the other party, or if the CLIENT suspends the work for more than three (3) months. In the event of termination, CONSULTANT will be paid for services performed prior to the date of termination plus reasonable termination expenses, including the cost of completing analyses, records and reports necessary to document job status at the time of termination.

## 13. Binding Dispute Resolution

The parties shall submit all disputes, claims or demands of any kind relating to, or arising out of, this Agreement to binding arbitration in accordance with the rules and regulations of the American Arbitration Association (or other, mutually agreeable, private arbitrator). The prevailing party in arbitration shall be entitled to recover all reasonable costs incurred, including staff time, arbitration or court costs, attorney's fees, and other claim related expenses. Application may be had by any party to any court of general jurisdiction for entry and enforcement of judgment based on the arbitration award. The foregoing notwithstanding, either party may maintain, for the purpose of obtaining a provisional remedy or provisional relief, any underlying action or claim on which such affirmative relief may be based. The court, pending arbitration of claims, shall stay the prosecution of such party's underlying claims on which any provisional remedies or relief are based.

## 14. Warranty of Authority to Sign

The person signing this contract warrants that he/she has authority to sign on the behalf of the CLIENT for whose benefit CONSULTANT'S services are rendered. If such person does not have such authority, he/she agrees that he/she is personally liable for all breaches of this contract and that in any action against him/her for breach of such warranty, a reasonable attorney's fee shall be included in any judgment rendered.

## 15. Fair Construction

This Agreement will be construed as a whole in accordance with its fair meaning and without regard to California Civil Code Section 1654 or similar statutes.

## 16. Governing Law, Waiver and Survival

The law of the State of California will govern the validity of these terms, their interpretation and performance.

Waiver by either party of any breach of this Agreement, will not constitute a waiver of any subsequent breach of the same or any other provision. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Risk allocation and indemnities will survive termination or failure of this Agreement for any cause.

The parties have read or had the opportunity to read the foregoing, including all attachments, addendums, and exhibits hereto, have had an opportunity to discuss the same, completely understand the terms, and willingly enter into this Agreement which will become effective on the date signed below.

## 17. Prevailing Wage Obligations

The CLIENT retains sole responsibility to inform CONSULTANT, in writing and prior to full execution of the contract if the above-referenced project is all or in part constitutes a "public work" under any and all federal, state, and/or local prevailing wage laws, and/or living wage laws, and/or ordinances, including but not limited to California Prevailing Wage laws, Davis-Bacon Act, the provisions of California Labor Code Section 1720 et seq., as well as any and all off-site work pursuant to California Streets and Highway Code 670.1. In addition, CLIENT shall notify CONSULTANT in writing if the CONSULTANT is obligated by statute, any public contracting authority, and/or a developer to pay prevailing wages and benefits and/or any other predetermined wages or benefits (collectively, "prevailing wage obligations"). In the event that CONSULTANT must adhere to federal, state, and/or local prevailing wage obligations for work performed, CLIENT shall provide CONSULTANT with any and all prevailing wage determinations applicable to the work to be performed by CONSULTANT. CLIENT understands and agrees that CONSULTANT's fee for work performed under this agreement will be calculated, in part, on the basis of representations by CLIENT regarding the existence and amount of any and all prevailing wage obligations and that, if such obligation exists, CONSULTANT's fee might be different. CLIENT shall also be responsible for informing CONSULTANT in writing and within ten (10) days of commencement of work whether certified payroll records are required to be submitted. CLIENT further understands and agrees that CONSULTANT will rely on the representations made by the CLIENT with regard to prevailing wage obligations and CLIENT agrees to defend, indemnify and hold harmless CONSULTANT against any and all claims, liabilities, suits, demands, losses, costs, and expenses, including but not limited to, reasonable attorney's fees, and all legal expenses and fees, fines, penalties, or sanctions, arising from CONSULTANT's reliance upon CLIENT's representations regarding prevailing wage obligations.

The subject project Does Not constitute a "public work" under any and all federal, state, and/or local prevailing wage laws.

The subject project, all or in part, constitutes a "public work" under Federal Davis Bacon prevailing wage laws only.

The subject project, all or in part, constitutes a "public work" under State and/or local prevailing wage laws.

☐ Initial \_\_\_\_\_  
☐ Initial \_\_\_\_\_  
☐ Initial \_\_\_\_\_

## 18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other prior or contemporaneous agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. Any changes to this Agreement must be mutually agreed to in writing.

CITY OF SAN JOAQUIN

SALEM ENGINEERING GROUP, INC.

by \_\_\_\_\_ Date \_\_\_\_\_  
Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_  
R. SAMMY SALEM, GE PRINCIPAL ENGINEER  
Name \_\_\_\_\_ Title \_\_\_\_\_

**Note:** Make sure to check the appropriate box above signature lines related to labor categories.



GEOTECHNICAL ENGINEERING • ENVIRONMENTAL ENGINEERING • CONSTRUCTION TESTING AND INSPECTIONS

June 1, 2023

KA Proposal No. T23330CAF

Mr. Roberto Orozco  
City of San Joaquin c/o Gouveia Engineering  
456 Sixth Street  
Gustine, California 95322

O: (209) 854-3300  
Email: rorozco@gouveiaengineering.com

**RE: SPECIAL INSPECTION & MATERIALS TESTING ESTIMATE**  
**Sutter Avenue Paving Improvements**  
**Sutter Avenue, Railroad to Manning**  
San Joaquin, California

Dear Mr. Orozco:

Krazan & Associates, Inc. (Krazan) appreciates the opportunity to submit this proposal for testing and inspection for the **San Joaquin Sutter Avenue Paving Improvements project**.

The following preliminary estimate is based on our experience with similar construction and a review of the provided plans. As more information becomes available, such as the contractor's construction schedule, we would be happy to revise the project estimate. Variances in the actual schedule may occur during the project and may affect the total cost for our testing and inspection services. Please refer to the attached estimate for further information.

Again, we appreciate the opportunity to submit this estimate and we believe you will be pleased with the selection of our firm. The following pages include the anticipated scope of work, hourly rates and estimate of costs for our services, general conditions, and contract. If you have any questions, or if we can be of further assistance, please do not hesitate to call our office at 559-348-2200.

**The following items are included as an Attachment:**

- ☒ Attachment A – Budget Estimate
- ☒ Attachment B – Agreement for Engineering Consulting Services, Construction Observation, & Materials Testing Services (Pages 1 – 4)

Respectfully submitted,  
**KRAZAN & ASSOCIATES, INC.**

Ian G. Beatty  
Project Manager  
Testing & Inspection Division

***With Offices Serving the Western United States***

215 W. Dakota Avenue • Clovis, CA 93611 • 559-348-2200 • Fax 559-348-2201 • [www.krazan.com](http://www.krazan.com)

**AGREEMENT FOR ENGINEERING CONSULTING SERVICES,  
CONSTRUCTION OBSERVATION AND MATERIALS TESTING SERVICES**

**THIS AGREEMENT** is made by and between KRAZAN & ASSOCIATES, INC., hereinafter referred to as "Consultant", and CITY OF SAN JOAQUIN c/o GOUVEIA ENGINEERING, 456 Sixth Street, Gustine, California 95322, hereinafter referred to as "Client." This Agreement between the parties consists of the TERMS AND CONDITIONS (below), the attached PROPOSAL titled "SUTTER AVENUE PAVING IMPROVEMENTS," file number T23330CAF, dated June 1, 2023 ("PROPOSAL"), and any exhibits or attachments cited in the PROPOSAL, which are incorporated in full by this reference. This Agreement, executed in Clovis, CA, is effective as of the date this Agreement is countersigned by Krazan & Associates, Inc, or the date on which Consultant initiates services as scheduled by Client, whichever occurs earlier. The parties agree as follows:

**1. DEFINITIONS**

**1.1. Contract Documents.** Plans, specifications, and agreements between Client and Contractor, including amendments, supplementary instructions, and change orders.

**1.2. Contractor.** The contractor or contractors, and including its/their subcontractors of every tier, retained to perform construction Work on the Project for which Consultant is providing Services under this Agreement.

**1.3. Day(s).** Calendar day(s) unless otherwise stated.

**1.4. Hazardous Materials.** The term Hazardous Materials means any toxic substances, chemicals, radioactivity, pollutants or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. Hazardous Materials include, but are not limited to, those substances defined, designated or listed in any federal, state or local law, regulation or ordinance concerning hazardous wastes, toxic substances or pollution.

**1.5. Services.** The professional services provided by Consultant as set forth in this Agreement, as included in Consultant's PROPOSAL and any written Change Order, Task Order or amendment to this Agreement, and Consultant's professional services as scheduled by Client's contractor through oral or written communication.

**1.6. Work.** The labor, materials, equipment and services of the Contractor required to complete the Work described in the Contract Documents.

**1.7. Fee Schedule.** Consultant's standard annual fee schedule unless project specific fee schedule is provided.

**1.8. Inspection (or Observation).** Visual determination of conformance with specific or, on the basis of Consultant's professional judgment, general requirements.

**1.9. Testing.** Measurement, examination, performance of tests, and any other activities to determine the characteristics or performance of materials.

**2. SCOPE OF SERVICES**

**2.1. Services Provided, Scheduling.** Consultant will provide construction materials testing and inspection services as set forth in the PROPOSAL and any additional services requested by Client by oral or written request (Scope of Services). Client or their designated agent shall cause all required tests and inspections of the site, materials and work performed by their Contractor to be scheduled no less than one full work day prior to the time when Consultant is to perform their scheduled tests or inspections. No claims for loss, damage or injury shall be brought against Consultant by Client or any third party for tests or inspections not performed due to inadequate scheduling notice provided to the Consultant by Client.

**2.2. Changes in Scope.** Client may request changes in the scope of services identified in the PROPOSAL. Such changes, including any additional types of Work to be inspected and/or tested, or any change in Consultant's compensation or time of performances, which may be requested in writing or orally and which are mutually agreed upon by Consultant and Client, will be incorporated in this Agreement. All Services performed by Consultant on the Project are subject to the terms and limitations of this Agreement. If Services are performed, but the parties do not reach agreement concerning modifications to the PROPOSAL, Services or compensation, then the terms and limitations of this Agreement apply to such Services, except for the payment terms. The parties agree to resolve disputes concerning modifications to scope or compensation pursuant to Section 15, "Disputes."

**2.3. Excluded Services.** Consultant's Services under this Agreement include only those Services specified in the PROPOSAL, and those services subsequently requested by Client and agreed to by Consultant. Client expressly releases any claim against Consultant relating to any additional Services that Consultant recommended or that the project designer or Building Official required, but that Client either did not authorize or instructed Consultant not to perform.

**2.4. Authority of Consultant.** Consultant will report observations and data to the Client and the General Contractor. Consultant will report any observed work to the Client or Client's representative, which, in Consultant's opinion, does not conform with plans, specifications, and codes applicable to the Project. Consultant has no right or responsibility to approve, accept, reject, or stop work of any agent of the Client.

**2.5. Variation of Material Characteristics and Conditions.** Observations and standardized sampling, inspection and testing procedures employed by Consultant will indicate conditions of materials and construction activities only at the precise location and time where and when Services were performed. Client recognizes that conditions of materials and construction activities at other locations may vary from those measured or observed, and that conditions at one location and time do not necessarily indicate the conditions of apparently identical material(s) at other locations and times. Services of Consultant, even if performed on a continuous basis, should not be interpreted to mean that Consultant is observing, verifying, testing or inspecting all materials on the Project. Consultant is responsible only for those data, interpretations, and recommendations regarding the actual materials and construction activities observed, sampled, inspected or tested, and is not responsible for other parties' interpretations or use of the information developed. Consultant may make certain inferences based upon the information derived from these procedures to formulate professional opinions regarding conditions in other areas.

**2.6. Sampling, Inspection & Test Locations.** Unless specifically stated otherwise, the Services do not include surveying the Site or precisely identifying sampling, inspection or test locations. Sampling, inspection and test locations will be based on field estimates and information furnished by Client and its representatives. Unless stated otherwise in the report, such locations are approximate. Consultant will take reasonable precautions to limit damage to the Project Site or Work due to the performance of Services, but Client understands that some damage may necessarily occur in the normal course of Services, and this Agreement does not include repair of such damage unless specifically stated in the PROPOSAL.

**2.7. Independent Contractor.** Consultant will perform Services under this Agreement as an independent contractor.

**3. PAYMENTS TO CONSULTANT**

**3.1. Basic Services.** Consultant will perform its services on a time and materials basis unless alternate payment terms are specifically stated in the PROPOSAL.

**3.2. Additional Services.** Any Services performed under this Agreement, including increased hours or units for those Services expressly identified in the attached PROPOSAL, and any additionally requested inspection and/or testing tasks, will be provided on a time and materials basis at the rates established for the project unless otherwise specifically agreed to in writing by both parties.

**3.3. Estimate of Fees.** Testing and Inspection services are highly dependent on contractors' schedules, weather, overlapping of work and many other factors. Client recognizes that changes in scope and schedule, and unforeseen circumstances, Contractor performance and production of the Work can all influence the successful completion of Services within the estimated cost.

The provision of an estimate of fees or a cost estimate is not a guarantee that the Services will be completed for that amount; Consultant's Services shall continue on a time and materials basis to completion of the Services unless directed otherwise by Client. Furthermore, the provision of a "not to exceed" limitation is not a guarantee that the Services will be completed for that amount; rather, it indicates that Consultant will not incur fees and expenses chargeable to Client in excess of the "not to exceed" limitation amount without notifying Client in writing that the "not-to-exceed" amount has been reached and that Services will continue on a time and materials basis unless directed by Client to discontinue any further Services. Consultant Project Manager charges are above and beyond unit rates quoted.

**3.4. Rates.** Client will pay Consultant at the rates set forth in the PROPOSAL and Fee Schedule.

**3.4.1. Billing Increments.** A four (4) hour minimum, portal to portal charge per call, applies to all Consultants services. Services beyond the initial minimum billing increment will be billed in increments of two (2) hour(s) for the first 8 hours and at increments of one hour thereafter for each day's Services for each assigned technician.

**3.4.2. Billing Rate Premiums.** Services initiated between the hours of 7:00 a.m. and 3:30 p.m. will be performed at the standard rates presented in the PROPOSAL and Fee Schedule. Services initiated outside of these hours will be billed at the appropriate rate plus a premium of 12.5 percent. Additionally,

services rendered on Saturdays or in excess of 8 hours on any week day will be billed at time and a-half the hourly rate. Services rendered on Holidays, Sundays, or in excess of 8 hours on a Saturday or in excess of 12 hours on any weekday will be charged at double the hourly rate. Late cancellation may be subject to reasonable charges if personnel cannot be appropriately reassigned.

**3.4.3. Changes to Rates.** Client and Consultant agree that the rates presented in the PROPOSAL and the Fee Schedule are applicable only through December 31 of the year published, unless stated otherwise in the PROPOSAL, and are subject to periodic review and amendment, as appropriate to reflect Consultant's then-current fee structure. Unless otherwise provided for in the PROPOSAL, where projects are on-going beyond December 31 of the year the services were initiated, the rates presented in the PROPOSAL and Fee Schedule are subject to an annual cost of living adjustment based on the consumer price index for the geographic area where our services are being provided. Notwithstanding the foregoing, where Prevailing Wage regulations apply Consultant's labor rates are subject to revision based on determinations made by the governing agency. Where labor rates are increased during the course of the project Consultant's billing rates presented in the PROPOSAL and the Fee Schedule shall be increased proportionally with respect to any mandated labor and/or benefits rate increases unless otherwise stipulated in the PROPOSAL. In the event that the cost of fuel increases 10 percent or more over the course of the project a fuel surcharge may be imposed to recoup the added costs incurred by Consultant. Consultant will give Client at least 30 days advance notice of any changes. Unless Client objects in writing to the proposed amended fee structure within 30 days of notification, the amended fee structure will be incorporated into this Agreement and will then supersede any prior fee structure. If Client timely objects to the amended fee structure, and Consultant and Client cannot agree upon a new fee structure within 30 days after notice, Consultant may terminate this Agreement and be compensated as set forth under Section 14, "Termination."

**3.4.4. Prevailing Wages.** Unless Client specifically informs Consultant in writing that prevailing wage regulations cover the Project and Client provides Consultant with the applicable Determination that includes Client's Services, and the Scope of Services identifies it as covered by such regulations, Client will reimburse, defend, indemnify and hold harmless Consultant from and against any liability resulting from a subsequent determination that prevailing wage regulations cover the Project, including all costs, fines and attorneys' fees.

**3.5 Expenses.** Miscellaneous out-of-pocket charges, such as parking, air fare, car/equipment rental, mailing, shipping, subcontractor charges, etc., will be charged on a cost plus overhead basis. On remote jobs or at fabrication facilities, subsistence, when not furnished, will be an additional charge.

**3.6. Payment Timing; Late Charge.** Consultant will submit invoices to Client periodically, but no more frequently than every two (2) weeks. All invoices are due and payable upon receipt. Upon Consultant's approval of Client for 30-day payment terms Client shall pay undisputed portions of each progress invoice within thirty (30) days of the date of the invoice. The invoice amounts shall be presumed to be correct unless Client notifies Consultant in writing. If Client objects to all or any portion of any invoice, Client will so notify Consultant in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and promptly pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid. Payment thereafter will first be applied to accrued late payment charges interest on unpaid undisputed charges and then to the unpaid principal amount. Consultant reserves the right to apply payments to Client's outstanding invoices from oldest to most recent regardless of project or invoice designation on checks received. All amounts unpaid when due will include a late payment charge from the date of the invoice, at the rate of 1-1/2% per month or the highest rate permitted by law on the unpaid balance from the invoice date until the invoice is paid. Consultant reserves the right to require payment in full on any and all invoices on Client's account regardless of project prior to releasing field notes, laboratory test data, photographs, analyses and/or reports. All undisputed amounts due to Consultant by Client shall be paid in full prior to Consultant's release of final reports or other required forms of certified or verified reports. If the account becomes delinquent, the Client will reimburse Consultant for all time spent and expenses (including fees of any attorney, collection agency, and/or court costs) incurred in connection with collecting any delinquent amount. Consultant shall not be bound by any provision or agreement conditioning Consultant's right to payment upon payment by a third party. In the event of a legal action for invoice amounts not paid, attorneys' fees, court costs, and other related expenses shall be paid to the prevailing party. Client's failure to pay Consultant when due the failure to pay will constitute a substantial failure of Client to perform under this Agreement and Consultant will have the right to stop all current work and withhold letters, reports, or any verbal consultation until the invoice is paid in full. In the event that Client fails to pay Consultant within sixty (60) days after any invoice is rendered, Client agrees that Consultant will have the right to consider the failure to pay Consultant's invoice as a breach of this Agreement. If the Client requests back-up data or changes to the format of the standard invoice, an administrative fee of \$100 per invoice may be charged plus \$1 per page of back-up data.

#### **4. STANDARD OF PERFORMANCE; DISCLAIMER OF WARRANTIES**

**4.1 Professional Standards.** Subject to the limitations inherent in the agreed Scope of Services as to the degree of care, the amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, Consultant will perform the Services consistent with that level of care and skill ordinarily exercised by other professionals providing similar services in the same locale and under similar circumstances at the time the Services are performed. No other representation and no warranty or guarantee, express or implied, is included or intended by this Agreement or any report, opinion, document, or other instrument of service.

**4.2. Level of Service.** Consultant offers different levels of construction observation, inspection and materials testing Services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive Services yield more information and reduce the probability of error, but at increased cost. Client must determine the level of Services adequate for its purposes. Client has reviewed the PROPOSAL and has determined that it does not need or want a greater level of Services than that specifically identified in the PROPOSAL.

**4.3. No Warranty.** Client recognizes the inherent risks connected with site development and construction activities, and understands when signing that those risks are not entirely eliminated through the services of Consultant. Consultant's tests and observations of the Work are not a guarantee of the quality of Work and do not relieve other parties from their responsibility to perform their Work in accordance with applicable plans, specifications and requirements. Therefore, in signing this Agreement the Client understands that Consultant neither makes nor intends a warranty or guarantee, express or implied, of any type nor does it create a fiduciary responsibility to Client by Consultant.

#### **5. CONTRACTOR'S PERFORMANCE**

Consultant is not responsible for Contractor's means, methods, techniques or sequences during the performance of its Work. Consultant will not supervise or direct Contractor's Work, or be liable for any failure of Contractor to complete its Work in accordance with the Project's plans, specifications and applicable codes, laws and regulations. Client understands and agrees that Contractor, not Consultant, has sole responsibility for the safety of persons and property at the Project Site. Consultant shall not be responsible for job site safety or the evaluating and reporting of job conditions concerning health, safety or welfare.

#### **6. CLIENT'S RESPONSIBILITIES**

In addition to payment for the Services performed under this Agreement, Client agrees to:

**6.1. Access.** Grant or obtain free access to the Project Site for all equipment and personnel necessary for Consultant to perform its Services under this Agreement.

**6.2. Relevant Information.** Supply Consultant with all information and documents relevant to Consultant's Services. Consultant is entitled to rely upon such information without verifying its accuracy. Client will notify Consultant of any known potential or possible health or safety hazard regarding the materials to be tested, including its intended use, chemical composition, relevant MSDS, manufacturers' specifications and literature, and any previous test results.

**6.3. Project Information.** Client agrees to provide Consultant within 5 days after written request, a correct statement of the recorded legal title to the property on which the Project is located and the Client and/or Owner's interest therein, and the identity and address of any construction lender.

#### **7. CHANGED CONDITIONS**

If Consultant discovers conditions or circumstances that it had not contemplated at the commencement of this Agreement ("Changed Conditions"), Consultant will notify Client in writing of the Changed Conditions. Client and Consultant agree that they will then renegotiate in good faith the terms and conditions of this Agreement. If Consultant and Client cannot agree upon amended terms and conditions within 30 days after notice, Consultant may terminate this Agreement and be compensated as set forth in Section 14, "Termination."

#### **8. ALLOCATION OF RISK**

**8.1. Limitation of Liability.** The total cumulative liability of Consultant, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees and agents (collectively "Consultant Entities"), to Client and its successors and all parties included as additional insured on Consultant's insurance policies and all of their respective shareholders, directors, officers, employees and agents (collectively "Client Entities") arising from or relating to Services under this Agreement, including attorney's fees due under this Agreement, will not exceed the gross compensation received by Consultant

under this Agreement or seventy-five thousand dollars (\$75,000.00) whichever is greater; provided, however, that such liability is further limited as described below. This limit is an aggregate limit with respect to all services on the project, whether provided under this, prior or subsequent agreements, unless modified in writing, agreed to and signed by authorized representatives of the parties. This limitation applies to all lawsuits, claims or actions that allege errors or omissions in Consultant's Services, whether alleged to arise in tort, contract, warranty, or other legal theory. Upon Client's written request, Consultant and Client may agree to increase the limitation to a greater amount in exchange for a negotiated increase in Consultant's fee, provided that they amend this Agreement in writing as provided in Section 16. Consultant Entities and Client Entities also agree that the Client Entities will not seek damages in excess of the limitations indirectly through suits with other parties who may join Consultant as a third-party defendant.

**8.2. Indemnification.** Client will indemnify, defend and hold harmless Consultant, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees and agents (collectively "Consultant Entities") from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reasonable attorney's fees and costs of defense) or other losses (collectively "Losses") except to the extent caused by the sole negligence of Consultant. In addition, except to the extent caused by Consultant's negligence, Client expressly agrees to defend, indemnify and hold harmless Consultant Entities from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

**8.3. Consequential Damages.** Neither Client nor Consultant will be liable to the other for any special, consequential, incidental or penal losses or damages of whatever nature including but not limited to losses, damages or claims related to the unavailability of property or facilities, shutdowns or service interruptions, loss of use, loss of profits, loss of revenue, or loss of inventory, or for use charges, cost of capital, or claims of the other party and/or its customers, which may arise directly or indirectly as a result of the Services provided by Consultant under this Agreement.

**8.4. Continuing Agreement.** The provisions of this Section 8, "Allocation of Risk," will survive the expiration or termination of this Agreement. If Company provides Services to Client that the parties do not confirm through execution of an amendment to this Agreement, the provisions of this Section 8 will apply to such Services as if the parties had executed an amendment.

**8.5. No Personal Liability.** Client and Consultant intend that Consultant's Services will not subject Consultant's individual employees, officers or directors to any personal liability. Therefore, and notwithstanding any other provision of this Agreement, Client agrees as its sole and exclusive remedy to direct or assert any claim, demand or suit only against the business entity identified as "Consultant" on the first page of this Agreement.

## **9. INSURANCE**

**9.1. Consultant's Insurance.** Consultant carries Statutory Workers' Compensation and Employer's Liability Insurance; Commercial General Liability Insurance for bodily injury and property damage; Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles; and Professional Liability Insurance. Certificates of insurance can be furnished upon written request but may not be processed unless accompanied by a signed Agreement. Client agrees not to withhold payment to Consultant for Client's failure to make such a timely request and such requests may not be honored if made after final completion of authorized Services. Additional charges may apply for Waiver of Subrogation and Additional Insured Endorsements. Consultant assumes the risk of damage caused by Consultant's personnel to Consultant's supplies and equipment.

**9.2. Contractor's Insurance.** Client shall require that all Contractors and subcontractors for the Project name Consultant as an additional insured under their General Liability and Automobile Liability insurance policies. If Client is not the Project owner, Client will require the Project owner to require the owner's Contractor to purchase and maintain General Liability, Builder's Risk, Automobile Liability, Workers' Compensation, and Employer's Liability insurance with limits no less than as set forth above, and to name Consultant and its subcontractors and subconsultants as additional insureds on the General Liability insurance. Upon request, Client will provide Consultant with certificate(s) of insurance evidencing the existence of the policies required herein.

## **10. OWNERSHIP AND USE OF DOCUMENTS**

**10.1. Use of Documents.** Documents prepared by Consultant are solely for use by Client and will not be provided by either party to any other person or entity, other than the project Architect, Structural Engineer, General Contractor and Building Department, without Consultant's prior written consent.

**10.1.1. Use by Client.** Client has the right to reuse the Documents for purposes reasonably connected with the Project for which the Services are provided, including without limitation design and licensing requirements of the Project.

**10.1.2. Use by Consultant.** Consultant retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from its Services and the right to use the Documents for any purpose.

**10.2. Electronic Media.** Consultant may agree at Client's request to provide Documents and information in an electronic format as a courtesy. However, the paper original issued by Consultant will remain the final documentation of the Services.

**10.3. Unauthorized Reuse.** No party other than Client may rely, and Client will not represent to any other party that it may rely on Documents without Consultant's express prior written consent and receipt of additional compensation. Client will defend, indemnify and hold harmless Consultant from and against any claim, action or proceeding brought by any party claiming to rely upon information or opinions contained in Documents provided to such person or entity, published, disclosed or referred to without Consultant's prior written consent.

## **11. SAMPLES**

Consultant will dispose of all samples collected during the construction phase of the project immediately upon completion of testing. Upon request received prior to the initiation of testing, Consultant will deliver samples to the Client or will store them for an agreed delivery or storage charge. All samples shall remain the property of the Client and, in the absence of evidence of contamination, Consultant shall dispose of samples for the Client. Client shall be responsible for and promptly pay for the removal and lawful disposal of all contaminated samples and hazardous materials and other hazardous substances, unless otherwise agreed in writing.

## **12. ASSIGNMENT AND SUBCONTRACTS**

During the term of this Agreement and following its expiration or termination for any reason, neither party may assign this Agreement or any right or claim under it, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Any assignment that fails to comply with this paragraph will be void and of no effect. Consultant may subcontract for the services of others without obtaining Client's consent if Consultant deems it necessary or desirable for others to perform certain Services.

## **13. SUSPENSION AND DELAYS**

**13.1. Procedures.** Client may, at any time by 10 days written notice suspend performance of all or any part of the Services by Consultant. Consultant may terminate this Agreement if Client suspends Consultant's Services for more than 60 days and Client will pay Consultant as set forth under Section 14, "Termination." If Client suspends Consultant's Services, or if Client or others delay Consultant's Services, Client and Consultant agree to equitably adjust: (1) the time for completion of the Services; and (2) Consultant's compensation in accordance with Consultant's then current Fee Schedule for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or charges incurred by Consultant for demobilization and subsequent remobilization.

**13.2. Liability.** Consultant is not liable to Client for any failure to perform or delay in performance due to circumstances beyond Consultant's control, including but not limited to pollution, contamination, or release of hazardous substances, strikes, lockouts, riots, wars, fires, flood, explosion, "acts of God," adverse weather conditions, acts of government, labor disputes, delays in transportation or inability to obtain material and equipment in the open market.

## **14. TERMINATION**

**14.1. Termination for Convenience.** Consultant and Client may terminate this Agreement for convenience upon 30 days written notice delivered or mailed to the other party.

**14.2. Termination for Cause.** In the event of material breach of this Agreement, the non-breaching party may terminate this Agreement if the breaching party fails to cure the breach within 5 days following delivery of the non-breaching party's written notice of the breach to the breaching party. The termination notice must state the basis for the termination. The Agreement may not be terminated for cause if the breaching party cures the breach within the 5-day period.

**14.3. Payment on Termination.** Following termination other than for Consultant's material breach of this Agreement, Client will pay Consultant for Services performed prior to the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the Project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts in accordance with Consultant's then current Fee Schedule.

## 15. DISPUTES

**15.1. Mediation.** All disputes between Consultant and Client, except those involving Client's failure to pay undisputed invoices as provided herein and excluding Consultant's perfection of any mechanic's lien, are subject to mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, amount of time or money claimed, and requiring that the matter be mediated within 45 days of service of notice. The mediation shall be administered by the American Arbitration Association or by such other person or organization as the parties may agree upon, in accordance with the rules of the American Arbitration Association.

**15.2. Precondition to Other Action.** No action or suit, except those involving Client's failure to pay undisputed invoices as provided herein and excluding Consultant's perfection of any mechanic's lien, may be commenced unless the mediation did not occur within 45 days after service of notice; or the mediation occurred but did not resolve the dispute; or a statute of limitation would elapse if suit was not filed prior to 45 days after service of notice. If the matter is referred to arbitration, the arbitration shall be conducted in Fresno County, California. The arbitrator shall be appointed within 60 days of the arbitrators' receipt of a written request to arbitrate the dispute. The arbitrator shall be authorized to provide all recognizable remedies available in law or equity for any cause of action that is the basis of the arbitration (to the extent such remedy is not otherwise precluded under this Agreement), provided that (i) the arbitrator shall not have the authority to award punitive damages, and (ii) each party shall bear its own costs and attorney's fees related to the arbitration.

**15.3. Choice of Law; Venue.** This Agreement will be construed in accordance with and governed by the laws of the state of California. Except for actions, such as for enforcement of mechanic's liens, which are required by statute to be brought in a specific venue, or unless the parties agree otherwise, any mediation or other legal proceeding will occur in Fresno County, California. Client waives the right to have the suit brought, or tried in, or removed to, any other county or judicial jurisdiction. The prevailing party will be entitled to recovery of all reasonable costs incurred, including court costs, reasonable attorney's fees, and other claim related direct expenses.

**15.4. Statutes of Limitations.** Any applicable statute of limitations will be deemed to commence running on the earlier of the date of substantial completion of Consultant's Services under this Agreement or the date on which claimant knew, or should have known, of facts giving rise to its claims.

## 16. MISCELLANEOUS

**16.1. Integration and Severability.** This Agreement reflects the entire agreement of the parties with respect to its terms and conditions, and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is void or voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as the law allows. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.

**16.2. Modification of This Agreement.** This Agreement may not be modified or altered, except by a written agreement signed by authorized representatives of both parties and referring specifically to this Agreement.

**16.3. Notices.** Any and all notices, requests, instructions, or other communications given by either party to the other must be in writing and either hand delivered to the recipient or delivered by first-class mail with return receipt (postage prepaid) or express mail (billed to sender) at the addresses given in this Agreement.

**16.4. Headings.** The headings used in this Agreement are for convenience only and are not a part of this Agreement.

**16.5. Waiver.** The waiver of any term, conditions or breach of this Agreement will not operate as a subsequent waiver of the same term, condition, or breach. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.

**16.6. Survival.** These terms and conditions survive the completion of the Services and/or the termination of this Agreement, whether for cause or for convenience.

**16.7. Warranty Of Authority To Sign, Personal Guarantee.** The person signing this contract warrants that he/she has authority to sign on the behalf of the Client for whose benefit Consultant's services are rendered. If such person does not have such authority, he/she agrees that he/she is personally liable for obligations under this Agreement and all breaches of this contract and that in any action against him/her for breach of such warranty, reasonable attorney's fees shall be included in any judgment rendered. Further, if Client fails to perform and is in breach of this Agreement the person signing this Agreement agrees that he/she is personally liable for obligations under this Agreement and all breaches of this contract and that in any action against him/her for breach of such warranty, reasonable attorney's fees shall be included in any judgment rendered.

**16.8. Precedence.** These Terms and Conditions take precedence over any inconsistent or contradictory provisions contained in any other agreement term, proposal, purchase order, requisition, notice to proceed, or other document regarding Consultant's Services.

**16.9. Incorporation of Provisions Required By Law.** Each provision and clause required by law to be inserted in this Agreement is included herein, and the Agreement should be read and enforced as though each were set forth in its entirety herein.

## 17. ENTIRE AGREEMENT

This Agreement between the parties consists of these Terms, the PROPOSAL by the Consultant, and any exhibits or attachments noted in the PROPOSAL. Together, these elements will constitute the entire Agreement superseding any and all prior negotiations, correspondence, or agreements either written or oral. The Parties have read the foregoing, understand completely the terms, and willingly enter into this Agreement. This Agreement was developed to be fair and reasonable to both parties. The terms of this Agreement will prevail over any different or additional terms in Client's purchase order or other forms provided by Client to Consultant as part of the authorization process unless agreed in writing by Consultant. The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to be bound accordingly. Consultant's acceptance of this Agreement is pending credit review and a retainer fee may be required.

**Client: CITY OF SAN JOAQUIN c/o GOUVEIA ENGINEERING**

**Consultant: KRAZAN & ASSOCIATES, INC.**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Krazan Quality Assurance Testing Estimate**

San Joaquin: Sutter Ave Paving Improvements, Railroad to Manning

KA Proposal T23330CAF

QUALITY ASSURANCE TESTING & INSPECTIONS				
TESTING & INSPECTION				
Labor:	No. Days	No. Units	Unit Rate	Cost
Subgrade Soil (Roadway, Flatwork, Misc)	20	4	\$115.00	\$9,200.00
Aggregate Base	8	2	\$115.00	\$1,840.00
Asphalt Batch Plant Sampling	4	4	\$75.00	\$1,200.00
Asphalt Sampling and Compaction Testing	4	8	\$115.00	\$3,680.00
Asphalt Sampling and Compaction Testing (Overtime)	4	2	\$172.50	\$1,380.00
Sample Pickup	5	2	\$75.00	\$750.00
Concrete Inspection and Testing	0	4	\$115.00	\$0.00
Trip Charges/Mileage	41	1	\$75.00	\$3,075.00
Report Preparation	4	5	\$55.00	\$1,100.00
Project Management	2	1	\$90.00	\$180.00
Registered Civil Engineer Review	4	1	\$150.00	\$600.00
<b>Inspection Labor Subtotal</b>				<b>\$23,005.00</b>
Laboratory Testing		No. Units	Unit Rate	Cost
Asphalt Gradation/Sand Equivalent (1/day or each 750 tons)		6	\$270.00	\$1,620.00
Asphalt Binder Content (1/day or each 750 tons)		6	\$200.00	\$1,200.00
Asphalt Maximum Theoretical Density (Rice) (1/day or each 750 tons placed)		6	\$250.00	\$1,500.00
Asphalt Stability (1/day or each 750 tons placed)		6	\$225.00	\$1,350.00
Asphalt Moisture Content (1/day or each 750 tons placed)		6	\$0.00	\$0.00
Asphalt Air Voids (1/day or each 750 tons placed)		6	\$250.00	\$1,500.00
Asphalt Core Density (each 500' of roadway)		8	\$25.00	\$200.00
Soil Maximum Density Proctor		10	\$200.00	\$2,000.00
Aggregate Base Maximum Density		4	\$200.00	\$800.00
Aggregate Subbase Maximum Density		0	\$200.00	\$0.00
Aggregate Base Suitability (SE, SA, R-value, Durability)		1	\$715.00	\$715.00
Aggregate Subbase Suitability (SE, SA, R-value)		0	\$520.00	\$0.00
Concrete Compressive Strength (set of 5)		0	\$100.00	\$0.00
<b>Laboratory Subtotal</b>				<b>\$10,885.00</b>
<b>TOTAL ESTIMATED QUALITY ASSURANCE COSTS:</b>				<b>\$33,890.00</b>

**Inclusions, Exclusions and Clarifications**

- Krazan & Associates charges a two (2.0) hour minimum per site visit per inspector and (1.0) one-hour increments thereafter. Overtime is billed in one (1.0) hour increments.
- Standard working hours are from 7:00 A.M to 3:30 P.M. Monday through Friday, or as established for the project. Any work performed beyond 8 hours per day and Saturdays will be billed at the hourly overtime rate (1.5 times the hourly rate). Any work performed beyond 12 hours per day or on Sundays will be billed at the hourly double-time rate (2.0 times the hourly rate).
- The above prices DO reflect the changes to Section 1720 (ref. SB1999) of the Labor Code requiring inspectors and Land Surveyors be paid general prevailing wage during all phases of construction. This amendment to Section 1720 of the Labor Code (approved 9-28-00) became effective Jan. 2001.
- Additional Services, as requested, will be billed on a time and materials basis in accordance with our yearly Fee Schedule.