

**AGREEMENT WITH GHIRARDELLI ASSOCIATES, INC.
FOR PROFESSIONAL CONSULTANT SERVICES
FOR
CITYWIDE STREET SLURRY SEAL PACKAGE 2-A PROJECT**

This Agreement, made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and Ghirardelli Associates, Inc., a corporation ("CONSULTANT"), whose address is 1970 Broadway, Suite 1220, Oakland, CA 94612.

RECITALS:

- A. CITY desires certain professional inspection services hereinafter described.
- B. CITY desires to engage CONSULTANT to provide these professional inspection services by reason of its qualifications and experience for performing such services and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONSULTANT under this Agreement is as described in Exhibit A to this Agreement, attached and incorporated by reference.

SECTION 2 - DUTIES OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONSULTANT represents that it is qualified to furnish the services described under this Agreement.

CONSULTANT shall be responsible for employing or engaging all persons necessary to perform the services of CONSULTANT.

CONSULTANT agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project.

CITY shall examine documents submitted by CONSULTANT and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONSULTANT's work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence on issuance of the Notice to Proceed ("NTP") and be completed within 12 months of issuance of the NTP.

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONSULTANT a fee in an amount of \$278,199.80, pursuant to rates stated in Exhibit A to this Agreement, attached and incorporated by reference.

SECTION 6 - TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement upon receipt of said written notice.

Upon termination and upon CITY's payment of the amount required to be paid, documents become the property of CITY, and CONSULTANT shall transfer them to CITY upon request without additional compensation.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONSULTANT in the performance of this Agreement, although instruments of professional service, are and shall be the property of CITY, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONSULTANT in connection with the performance of this Agreement are confidential until released by CITY to the public. CONSULTANT shall not make any such documents or information available to any individual or organization not employed by CONSULTANT or CITY without the written consent of CITY before any such release.

SECTION 9 - INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 - CONSULTANT'S STATUS

It is expressly agreed that in the performance of the professional services required under this Agreement, CONSULTANT shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONSULTANT an agent or employee of CITY while providing services under this Agreement.

SECTION 11 - INDEMNITY

CONSULTANT agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONSULTANT's performance of this Agreement, except those claims arising out of CITY's sole negligence or willful misconduct. CONSULTANT agrees to defend City, its elected and appointed officials, employees, and agents against any such claims.

SECTION 12 - INSURANCE

CONSULTANT shall procure and maintain for the duration of the contract and three years thereafter (five years for building or major improvements) the insurance specified in Exhibit B to this Agreement.

SECTION 13 - NON-ASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of CITY.

SECTION 14 - RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT

It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that CITY relies upon the skill of CONSULTANT to do and perform the work in the most skillful manner, and CONSULTANT agrees to thus perform the work. The acceptance of CONSULTANT's work by CITY does not operate as a release of CONSULTANT from said obligation.

SECTION 15 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 16 - SEVERABILITY

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

SECTION 17 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 18 - NON-DISCRIMINATION

CONSULTANT warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONSULTANT nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 19 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once

commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 20 - LITIGATION

CONSULTANT shall testify at CITY'S request if litigation is brought against CITY in connection with CONSULTANT's services under this Agreement. Unless the action is brought by CONSULTANT, or is based upon CONSULTANT's wrongdoing, CITY shall compensate CONSULTANT for preparation for testimony, testimony, and travel at CONSULTANT's standard hourly rates at the time of actual testimony.

SECTION 21 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY:	City of San Mateo 330 W 20 th Ave San Mateo, CA 94403
To CONSULTANT:	Ghirardelli Associates, Inc. Attn: Randall Bruner, President 1970 Broadway, Suite 1220, Oakland, CA 94612

SECTION 22 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONSULTANT.

SECTION 23 - AUTHORITY TO ENTER INTO AGREEMENT

CONSULTANT has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

SECTION 24 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY OF SAN MATEO and Ghirardelli Associates, Inc. have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONSULTANT

Azalea Mitch	Date
Director of Public Works	

Randall Bruner Its Authorized Agent President	Date
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If a Corporation, can be either 1) President or 2) Vice President plus an additional corporate officer (i.e., Secretary, Treasurer) who shall sign below.

APPROVED AS TO FORM

ADDITIONAL CORPORATE
OFFICER
(if necessary per the above)

Linh Nguyen
Assistant City Attorney

Date _____

Attachments:

Exhibit A: Scope of Services
Exhibit B: Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

SCOPE OF WORK

Ghirardelli is proud to bring its experience with similar slurry seal projects. Our approach for this type of project is built around the qualifications and experience of our staff and lessons learned from previous projects with the City of San Mateo. Our team realizes that the success of any construction project depends on the ability of the construction management team to proactively identify and anticipate issues and resolve these potential issues promptly before they impact the project budget and schedule.

Ghirardelli will provide construction inspection services on the project, including, but not limited to the following:

- Inspect and observe construction contractor's work daily for compliance with the contract documents, environmental documents, state laws, regulations, etc.
- Provide construction contractor with acceptability or deficiencies in work and required actions for contract compliance.
- Maintain daily inspection reports of work, including photos, descriptions of daily activities, any corrective actions to be taken by the Contractor, persons and equipment onsite, and any other pertinent information.
- Review of materials and equipment delivered to site for compliance with submittals and contract documents.
- Coordinate and provide material testing as required.
- Review of construction contractor's compliance with all permits, stormwater regulations and permits (SWPPP), and environmental documents.
- Review of construction contractor's compliance with health and safety standards and regulations and reporting of non-compliance.
- Monitor record documents to ensure proper maintenance and completion by contractor.
- Develop punch list and perform other project closeout activities, as needed.

Daily Inspection Reports

Ghirardelli's inspectors (Cesar Lara and Keith Baty) will prepare a daily report for each construction day. The inspector's daily reports will be provided to the City's Resident Engineer. This information will be used for the preparation and evaluation of the monthly progress estimates, non-compliance issues, construction delays, compliance tests, CPM schedule review, liquidated damages, and claims. The daily reports will include the following information:

- Date, project identification, contractor's name, subcontractor's name(s), and time of inspections.
- Conditions (weather, moisture, soil, etc.); any inclement weather conditions that hampered or delayed the contractor's operations.
- Activities detail. Scheduled activities including starting and completion dates. Bid item numbers of all activities should be listed in the daily report.
- Difficulties encountered by the contractor.
- Controversial matters (disputes, questionable items, etc.).
- Deficiencies and violations (including construction work, safety, labor, etc.).
- Record of manpower, construction equipment, and materials testing locations and results.

Materials Testing

Ghirardelli's Inspectors (Cesar Lara and Keith Baty) will coordinate all materials testing with BSK Associates. All materials testing (field and laboratory) will be performed at the frequency established by the contract documents including the City's Quality Assurance Plan (QAP) and the Caltrans Construction Manual. Mr. Lara will review the test reports for compliance and maintain the required documentation, including a non-conformance log to assure that all failed tests are retested until meeting compliance.

FEE PROPOSAL

Below is the estimated fee for the Citywide Street Slurry Seal Package 2-A Project based on our review and understanding of the plans and specifications along with our correspondence with the City. Ghirardelli estimates that our fee will be \$278,199.80.

Hourly Rates

	PW BILL RATE					
	First Shift			Second Shift		
NAME	ST	OT	DT	ST	OT	DT
Cesar Lara (Lead Inspector)	\$169.12	\$240.99	\$321.31	\$185.33	\$258.29	\$331.24
Keith Baty (Backup Inspector)	\$179.70	\$269.56	\$359.41	\$187.59	\$269.56	\$359.41

Fee Breakdown

Lead Inspector (Cesar Lara)	960 hours	x	\$169.12/hour	=	\$162,355.20
Lead Inspector (Cesar Lara)	40 hours	x	\$240.99/hour	=	\$ 9,639.60
Backup Inspector (Keith Baty)	320 hours	x	\$179.70/hour	=	\$ 57,504.00

Materials Testing (BSK Associates)	<u>\$ 48,701.00</u>
<i>Total Fee Estimate</i>	<i>\$278,199.80</i>

Fee Assumptions

- Lead Inspector hours based on:*
 - 120 working days (960 hours) of work conducted during the First Shift at the Standard Rate.*
 - 40 hours of work conducted during the First Shift at the Overtime Rate.*
- Backup Inspector hours based on 40 working days (320 hours) of work conducted during the First Shift at the Standard Rate.*
- Rates and Fees are valid for the duration of the contract.*

COST ESTIMATE SUMMARY FOR MATERIALS TESTING

City of San Mateo Citywide Street Slurry Seal Package 2-A City Project No. 467008-46000-1010-46350 Quality Assurance (QA) Construction Materials Testing

FIELD SERVICES	DAYS	HRS/DAY	HOURS	RATE	EXTENSION
Earthwork Construction					
Compaction Testing Base Failure Repairs - Group 3 Engineering Technician HMA Sampling and Testing - Group 3 Engineering Technician	4	8	32	\$135.00	\$4,320.00
Slurry Seal - Group 3 Engineering Technician Nuclear Gauge	1	8	8	\$135.00	\$1,080.00
Equipment Fee	15	8	120	\$135.00	\$16,200.00
Trip Charge	5			\$64.00	\$320.00
Trip Charge (Mileage, Bridge Toll, Parking Fees)	20			\$75.00	\$1,500.00
				FIELD SERVICES ESTIMATE	\$23,420.00

LABORATORY TESTING	FREQUENCY	SETS/UNITS	RATE	EXTENSION
Base Repairs				
Modified Proctor, 6" Curve	as required	2	\$286.00	\$572.00
Theoretical Maximum Density (CTM 309)	1 per mix	1	\$286.00	\$286.00
HMA Testing				
Sieve Analysis - 3 Bin Samples (AASHTO T27)	1 per 750 tons	1	\$285.00	\$285.00
Sand Equivalent (AASHTO T27)	1 per 750 tons	1	\$144.00	\$144.00
Aggregate Moisture Content (AASHTO T255)	1 per 750 tons		\$49.00	\$0.00
Percent Crushed Particles (AASHTO T335)	1 per project	1	\$189.00	\$189.00
LA Rattler (AASHTO T96)	1 per project	1	\$327.00	\$327.00
Flat and Elongated Particles (ASTM D47915)	1 per project	1	\$144.00	\$144.00
Fine Aggregate Angularity (CTM 234)	1 per project	1	\$92.00	\$92.00
Asphalt Binder Content (AASHTO T308, Method A)	1 per 750 tons	1	\$256.00	\$256.00
Ignition Oven Correction Factor	1 per mix	1	\$595.00	\$595.00
Theoretical Maximum Density (CTM 309)	1 per 750 tons	1	\$286.00	\$286.00
HMA Core Unit Weight/ Bulk Specific Gravity (CTM 308)	if required		\$167.00	if required
Slurry Seal				
Sieve Analysis of Fine & Coarse Aggregate (C136)	1 per day	15	\$190.00	\$2,850.00
Sand Equivalent (ASTM D2419)	1 per day	15	\$144.00	\$2,160.00
Durability Index (CTM 229)	1 per day	15	\$286.00	\$4,290.00
Abrasion by LA Rattler	1 per day	15	\$269.00	\$4,035.00
Percent Crush Particles	1 per day	15	\$189.00	\$2,835.00
Viscosity - Emulsion (AASHTO T59)	1 every 5 days	3	\$115.00	\$345.00
Sieve Test - Emulsion (AASHTO T59)	1 every 5 days	3	\$95.00	\$285.00
Particle Charge - Emulsion	1 every 5 days	3	\$165.00	\$495.00
Residue by Evaporation - Emulsion (ASTM D244)	1 every 5 days	3	\$110.00	\$330.00
LABORATORY TESTING ESTIMATE				\$20,801.00

BSK SERVICES ADMINISTRATION	HOURS	RATE	EXTENSION
Registered Engineer (Review, support and reporting)	6	\$230.00	\$1,380.00
Project Manager (Field Oversight, Daily Report Review)	8	\$230.00	\$1,840.00
Administration (Data Processing, Report Prep., Field Coordination)	4	\$90.00	\$360.00
Certified Payroll / DIR Upload	3	\$300.00	\$900.00
		ADMINISTRATION ESTIMATE	\$4,480.00
		TOTAL BUDGET ESTIMATE	\$48,701.00

EXHIBIT B

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the CONSULTANT’s profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

If the CONSULTANT maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT’s insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the CONSULTANT's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

Waiver of Subrogation

CONSULTANT hereby grants to City a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the City by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the CONSULTANT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

CONSULTANT shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.