

AGREEMENT TO FURNISH CONSTRUCTION INSPECTION AND MATERIAL
TESTING SERVICES FOR THE 1350 ZONE RESERVOIR PROJECT
PROJECT NO. 4-0518

This Agreement is made and entered into this 7th day of September, 2004 by and between the City of Redlands, a municipal corporation (hereinafter "City") and CHJ, Inc. hereinafter ("Consultant").

In consideration of the mutual promises, contained herein, City and Consultant agree as follows:

ARTICLE 1 - ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant to perform construction inspection and material testing services ("Services") for the 1350 Zone Reservoir Project (the "Project").
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional consultants in the industry providing similar types of services.

ARTICLE 2 - SERVICES OF CONSULTANT

- 2.1 The specific Services which Consultant shall perform are more particularly described in Attachment "A", entitled "Scope of Services" which is attached hereto and incorporated herein by this reference.
- 2.2 Consultant shall comply with all applicable Federal, State and local laws and regulations in the performance of this Agreement including, but not limited to, compliance with the State's Fair Employment and Housing Act and all applicable Labor Code and prevailing wage laws.

ARTICLE 3 - RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that is pertinent to the performance of Consultant's Services.
- 3.2 City will provide access to and make provisions for Consultant to enter upon City-owned property as required by Consultant to perform the Services.
- 3.3 City designates Mike Pool, to act as its representative with respect to the Services to be performed under this Agreement.

ARTICLE 4 - PERIOD OF SERVICE

ARTICLE 5 - PAYMENTS TO THE CONSULTANT

- 5.1 A. The total compensation for Consultant's performance of the Services shall not exceed \$20,060. City shall pay Consultant on a time and materials basis up to such amount, in accordance with Attachment "C," entitled "Project Fee," based upon the hourly rates shown in Attachment "D" entitled "Rate Schedule."
- B. Notwithstanding subsection "A," above, City may authorize Consultant to perform additional services in excess of those described in the Scope of Services at the same rates as provided in Attachment "D" and compensate Consultant in an amount not to exceed ten percent (10%) of the "not to exceed" compensation described in subsection "A."
- 5.2 Consultant shall bill City within ten days following the close of each month by submitting an invoice indicating the portion of the Services performed, who performed the Services, indirect costs, and the detailed cost of all Services including backup documentation. Payments by City to Consultant shall be made within 30 days after receipt and approval of Consultant's invoice, by warrant payable to Consultant.
- 5.3 All contractual notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail shall be addressed as follows:

City
Michael Pool
Municipal Utilities Dept.
PO Box 3005
Redlands, CA 92373

Consultant
George Battey, III
Vice President
CHJ, Inc.
PO Box 231
Colton, CA 92324

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to whom notices and payments are to be given by giving notice pursuant to this paragraph.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

6.1 Consultant's Insurance to be Primary

All insurance required by this Agreement is to be maintained by Consultant for the duration of this Project and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by the City. Consultant shall not perform any Services pursuant to this Agreement unless and until all required insurance listed below is obtained by Consultant. Consultant shall provide City with Certificates of Insurance and endorsements evidencing such insurance prior to performing the Services. All insurance policies shall include a provision prohibiting cancellation

of the policy except upon thirty (30) days prior written notice to City.

6.2 Workers' Compensation and Employer's Liability

- A. Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of this Agreement in amounts which meet statutory requirements with an insurance carrier acceptable to City.
- B. Consultant expressly waives all rights to subrogation against City, its officers, employees and volunteers for losses arising from work performed by Consultant for City by expressly waiving Consultant's immunity for injuries to Consultant's employees and agrees that the obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by or on behalf of any employee of Consultant. This waiver is mutually negotiated by the parties. This waiver shall not apply to any damage resulting from the sole negligence of City, its agents and employees. To the extent any of the damages referenced herein were caused by or resulted from the concurrent negligence of City, its agents or employees, the obligations provided herein to indemnify, defend and hold harmless are valid and enforceable only to the extent of the negligence of Consultant, its officers, agents and employees.

6.3 Comprehensive General Liability Insurance. Consultant shall secure and maintain in force throughout the duration of this Agreement comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. Consultant shall obtain an endorsement that City shall be named as an additional insured.

6.4 Professional Liability Insurance. Consultant, shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate.

6.5 Business Auto Liability Insurance. Consultant shall have business auto liability coverage, with minimum limits of one million dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Consultant owned vehicles used on the project, hired and non-owned vehicles, and employee non-ownership vehicles. Consultant shall obtain an endorsement that City shall be named as an additional insured.

6.6 Assignment and Insurance Requirements. Consultant is expressly prohibited from assigning any of the Services without the express written consent of City. In the event of mutual agreement between parties to assigning a portion of the Services, Consultant shall add the assignee as an additional insured and provide City with the insurance endorsements prior to any work being performed by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided in this Agreement.

6.7 Hold Harmless and Indemnification. Consultant shall defend, indemnify and hold harmless City, its elected officials, officers, employees and agents, from and against any and all actions, claims, demands, lawsuits, losses and liability for damages to persons or property, including costs and attorney fees, that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of or in connection with Consultant's negligent and/or intentionally wrongful acts or omissions under this Agreement; but excluding such actions, claims, demands, lawsuits and liability for damages to persons or property arising from the sole negligence or intentionally wrongful acts of City, its officers, employees or agents.


ARTICLE 7 - GENERAL CONSIDERATIONS

- 7.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for in-house counsel for the parties at rates prevailing in San Bernardino County, California.
- 7.2 Consultant shall not assign any of the Services except with the prior written approval of City and in strict compliance with the terms and conditions of this Agreement.
- 7.3 Consultant's key personnel for the Project are James Little and George Battey, III. Consultant agrees that Messrs. Little and Battey shall be made available and assigned to perform the Services and that they shall not be replaced without concurrence from City.
- 7.4 All documents, records, drawings, designs, cost estimates, electronic data files, databases, and other documents developed by Consultant pursuant to this Agreement and any copyright interest in said above described documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents and any use of incomplete documents will be at City's sole risk.
- 7.5 Consultant is for all purposes an independent contractor. Consultant shall supply all tools and instrumentalities required to perform the Services. All personnel employed by Consultant are for its account only, and in no event shall Consultant or any personnel retained by it be deemed to have been employed by City or engaged by City for the account of or on behalf of City.
- 7.6 Unless earlier terminated, as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City.
- 7.7 This Agreement may be terminated by City, without cause, by providing five (5) days prior written notice to Consultant (delivered by certified mail, return receipt requested) of its intent to terminate.
- 7.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

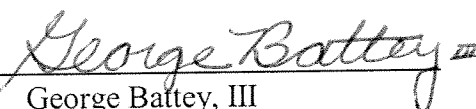
- 7.9 If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant.
- 7.10 Upon receipt of a termination notice, Consultant shall (1) promptly discontinue all Services affected, and (2) deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of any data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services.
- 7.11 Consultant shall maintain books and accounts of all Project related payroll costs and all expenses. Such books shall be available at all reasonable times for examination by the City at the office of Consultant.
- 7.12 This Agreement, including the attachments incorporated herein by reference, represents the entire agreement and understanding between the parties as to the matters contained herein, and any prior negotiations, proposals or oral arguments are superseded by this Agreement. Any amendment to this Agreement shall be in writing, approved by the City Council of City and signed by City and Consultant.
- 7.13 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, duly authorized representatives of City and Consultant have signed in confirmation of this Agreement.

City of Redlands

By: 
Susan Peppler
Mayor

CHJ, Inc.

By: 
George Battey, III
Vice President

Attest:


City Clerk, City of Redlands

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MATERIAL TESTING SERVICES FOR
*1350 ZONE RESERVOIR PROJECT, PROJECT NO. 4-0518***

ATTACHMENT "A"

SCOPE OF SERVICES

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C.H.J. INCORPORATED will provide the following services:

Provide special inspection services for ring wall footing and vaults, field welding of tank, ladders and miscellaneous metals. Inspection of all high strength bolting, paint and coating thickness and holiday inspection (contractor to supply holiday detectors as per specifications).

The scope of services for Construction Materials Testing and Inspection is based on the following level of effort.

CONSTRUCTION MATERIALS TESTING AND INSPECTION:

<u>Amount</u>	<u>Description</u>
32 Hours	Concrete Inspection
120 Hours	Steel Inspection
120 Hours	Coating Thickness and Holiday Inspection
4 Hours	Sample Pick-Up
16 Samples	Compressive Strength Tests