

CS-13-54

CDM Smith Inc.  
Contract No. CM2027  
Bid No. NC13-007

**AGREEMENT FOR CONTINUING CONTRACT FOR CONSTRUCTION  
ENGINEERING INSPECTION (CEI) SERVICES**

THIS AGREEMENT made and entered into this 20th day of November 2013, by and between the Board of County Commissioners of Nassau County, a political subdivision of the State of Florida, hereinafter referred to as "County", and CDM Smith Inc., a Massachusetts Corporation, whose principle office address is located at One Cambridge Place, 50 Hampshire Street, Cambridge, Massachusetts 02139, and whose local office address is 7029-1 Commonwealth Avenue, Jacksonville, Florida 32220, hereinafter referred to as "Consultant":

WHEREAS, the County desires Construction Engineering Inspection (CEI) services under a continuing contract; and

WHEREAS, the Consultant desires to render certain Construction Engineering Inspection Services as described in the Scope of Services, and has the qualifications, experience, staff and resources to perform those services; and

WHEREAS, the County, through a competitive selection process conducted in accordance with the requirements of law and County policy has determined that it would be in the best interest of the County to award a contract to Consultant for the rendering of those services described in the Scope of Services.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

## **ARTICLE 1 - EMPLOYMENT OF CONSULTANT**

The County hereby agrees to engage Consultant, and Consultant hereby agrees to perform the services set forth in the Scope of Services.

## **ARTICLE 2 - SCOPE OF SERVICES**

- 2.1 Consultant shall provide Construction Engineering Inspection (CEI) services in accordance with the Scope of Services set forth in Attachment "A", attached hereto and incorporated by reference.
- 2.2 The services shall be performed on an "as needed" basis per project and by Work Authorization to this contract. Each Work Authorization shall be approved by the Board of County Commissioners or their authorized designee.

## **ARTICLE 3 - THE COUNTY'S RESPONSIBILITY**

Except as provided in the Scope of Service, the County's responsibilities are to furnish required information, services, render approvals and decisions as necessary for the orderly progress of Consultant's services. The County hereby designates the Director of Engineering Services to act on the County's behalf with respect to the Scope of Services. The Director of Engineering Services, under the supervision of the County Administrator shall have complete authority to transmit instructions, receive information, interpret and define County's policies and decisions with respect to materials, elements and systems pertinent to Consultant's services.

## **ARTICLE 4 - TERM OF AGREEMENT**

The term of this Agreement shall be for a three (3) year period beginning on the date first written.

## **ARTICLE 5 - COMPENSATION**

5.1 The County shall pay Consultant in accordance with the provisions contained in the Fee Schedule, which is attached hereto as Attachment "B", and incorporated herein as if set forth in full.

5.2 Consultant shall prepare and submit to the Director of Engineering Services, for approval, a monthly invoice for the services rendered under this Agreement. Invoices for services shall be paid in accordance with the Florida Prompt Payment Act. All invoices shall be accompanied by a report identifying the nature and progress of the work performed. The statement shall show a summary of fees with an accrual of the total fees billed and credits for portions paid previously. The County reserves the right to withhold payment to Consultant for failure to perform the work in accordance with the provisions of this Agreement, and the County shall promptly notify Consultant if any invoice or report is found to be unacceptable and will specify the reasons therefor.

5.3 All representation, indemnifications, warranties and guaranties made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, will survive final payment and termination or completion of this Agreement.

5.4 Final Invoice per Project: In order for both parties herein to close their books and records, the Consultant will clearly state "Final Invoice" on the Consultant's final/last billing to the County, this indicates that all services have been performed and all charges and costs have been invoiced to the County and that there is no further work to be performed on the specific project.

5.5 Each project shall have its own specific value on a "stand alone" basis.

**5.6** Labor Unit rates shall be established at the beginning of this Agreement and may be adjusted annually upon written agreement of the parties beginning with the next assigned project issued after the anniversary date of the Agreement. The labor unit rates are set forth in Exhibit B.

#### **ARTICLE 6 - STANDARD OF CARE**

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a professional under similar circumstances and Consultant shall, at no additional cost to the County, re-perform services which fail to satisfy the foregoing standard of care.

#### **ARTICLE 7 - DOCUMENTS**

The documents which comprise this Agreement between the County and the Consultant are attached hereto and made a part hereof and consist of the following:

- 7.1** This Agreement;
- 7.2** The Scope of Services attached hereto as Attachment "A";
- 7.3** Fee Schedule attached hereto as Attachment "B";
- 7.4** Any work authorizations, written amendments, modifications or addenda to this Agreement.

#### **ARTICLE 8 - EQUAL OPPORTUNITY EMPLOYMENT**

In connection with the work to be performed under this Agreement, Consultant agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity statutes and regulations.

#### **ARTICLE 9 - TRUTH-IN-NEGOTIATION/PUBLIC ENTITY CRIMES AFFIDAVIT**

Consultant certifies that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The

original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the county determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. Consultant represents that it has furnished a Public Entity Crimes Affidavit pursuant to Section 287.133, Florida Statutes.

**ARTICLE 10 - INDEMNIFICATION**

Consultant shall indemnify and hold harmless the County and its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant, in the performance of the contract.

**ARTICLE 11 - INDEPENDENT CONTRACTOR**

Consultant undertakes performance of the services as an independent contractor under this Agreement, and shall be wholly responsible for the methods of performance. The County shall have no right to supervise the methods used, but the County shall have the right to observe such performance. Consultant shall work closely with the County in performing services under this Agreement.

**ARTICLE 12 – EXTENT OF AGREEMENT**

**12.1** This Agreement represents the entire and integrated agreement between the County and Consultant and supersedes all prior negotiations, representations, or agreement, either written or oral.

**12.2** This Agreement may only be amended, supplemented, modified, changed or canceled by a duly executed written instrument.

## **ARTICLE 13 - COMPLIANCE WITH LAWS**

In performance of the services, Consultant will comply with applicable regulatory requirements including federal, state, and local laws, rules regulations, orders, codes, criteria and standards.

## **ARTICLE 14 - INSURANCE**

**14.1** The Consultant shall purchase and maintain such commercial (occurrence form) or comprehensive general liability, workers compensation, professional liability, and other insurance as is appropriate for the services being performed hereunder by Consultant, its employees or agents. The amounts and types of insurance shall conform to the following minimum requirements.

**14.1.1 Worker's Compensation:** Coverage must apply for all employees and statutory limits in compliance with the applicable state and federal laws. In addition, the policy must include the following:

- a. Employer's Liability with a minimum limit per accident in accordance with statutory requirements.
- b. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) days' written notice of cancellation and/or restriction.

**14.1.2 Comprehensive General Liability:** Coverage must include:

- a. \$1,000,000.00 combined limit per occurrence for bodily injury, personal injury and property damage; \$2,000,000 general aggregate.
- b. Contractual coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement.

- c. Additional Insured. County is to be specifically included as an additional insured.
- d. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) days' written notice of cancellation and/or restriction.

**14.1.3 Professional Liability:**

- a. Consultant agrees to maintain Professional Liability with limits of not less than \$1,000,000 for professional services rendered in accordance with this agreement.
- b. Consultant shall maintain such insurance for at least two (2) years from the termination of this Agreement and during this two (2) year period the Consultant shall use his best efforts to ensure that there is no change of the retroactive date on this insurance coverage.
- c. If there is a change that reduces or restricts the coverage carried during the Agreement, the Consultant shall notify the County within thirty (30) days of the change.

**14.1.4 Comprehensive Automobile Liability:** Coverage must be afforded on a form no more restricted than the latest edition of the Comprehensive Automobile Liability Policy filed by the Insurance Services Office and must include:

- a. \$1,000,000 combined single limit per accident for bodily injury and property damage.
- b. Owned Vehicles

- c. Hired and Non-Owned Vehicles
- d. Employee Non-Ownership
- e. Additional Insured. County is to be specifically included as an additional insured.
- f. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) days' written notice of cancellation and/or restriction.

**14.1.5 Umbrella Policy:** Coverage must be afforded on a form no more restricted than the latest Umbrella Policy filed by Insurance Services Offices and must include:

- a. \$1,000,000 per occurrence
- b. General Liability underlying coverage: \$1,000,000 for bodily injury, personal injury and property damage. General Aggregate of \$2,000,000.
- c. Auto liability: Underlying combined single limit of \$1,000,000.
- d. Employer's Liability: Underlying limit  
\$500,000/\$500,000/\$500,000
- e. Additional insured. County is specifically included as an additional insured.
- f. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) days written notice of cancellation and/or restriction.

**14.2** Certificates of Insurance evidencing the insurance coverage specified in this Section shall be filed with the County. The Certificates of Insurance shall be filed



with County before this Agreement is deemed approved by the County. The required Certificates of Insurance not only shall name types of policies provided, but also shall refer specifically to this Agreement. All the policies of insurance so required of Consultant except workers compensation and professional liability insurance shall be endorsed to include as additional insured the County, its officers, employees, and agents to the extent of the County's interest arising from any contract agreement between County and Consultant. If the initial insurance expires prior to completion of the work, renewal Certificates of Insurance shall be furnished thirty (30) days prior to the date of their expiration.

**14.3** Insurance coverage shall be placed with insurers or self-insurance funds, satisfactory to the County, licensed to do business in the State of Florida and with a resident agent designated for the service of process. All insurers shall have an "A" policyholder's rating and a financial rating of at least Class IX in accordance with the most current Best's rating. Consultant shall provide the County with financial information concerning any self insurance fund insuring Consultant. At the County's option, a Best's rating or Self-Insurance Fund financial information may be waived.

#### **ARTICLE 15 – ACCESS TO PREMISES**

The County shall be responsible for providing access to all project sites, and for providing project-specific information.

#### **ARTICLE 16 - TERMINATION OF AGREEMENT**

**16.1 Termination for Convenience:** This Agreement may be terminated by the County for convenience, upon thirty (30) days of written notice to Consultant. In such event, the Consultant shall be paid its compensation for services performed prior to the termination date. In the event that the Consultant abandons this Agreement or

causes it to be terminated, Consultant is liable to the County for any and all loss pertaining to this termination.

**16.2 Default by Consultant:** In addition to all other remedies available to the County, the County may terminate this Agreement for cause should the Consultant neglect, fail to perform, or observe any of the terms, provisions, conditions, or requirements herein contained. Prior to termination the County shall provide written notice of the specific conditions warranting default, and the County shall allow thirty (30) days for Consultant to cure.

#### **ARTICLE 17 - NONDISCLOSURE OF PROPRIETARY INFORMATION**

Consultant shall consider all information provided by County and all reports, studies, calculations, and other documentation resulting from the Consultant's performance of the Services to be proprietary unless such information is available from public sources. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of County or in response to legal process.

#### **ARTICLE 18 - UNCONTROLLABLE FORCES**

**18.1** Neither the County nor Consultant shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

**18.2** Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

#### **ARTICLE 19 - GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Nassau County.

#### **ARTICLE 20 - MISCELLANEOUS**

**20.1 Non-waiver:** A waiver by either County or Consultant of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

**20.2 Severability:** Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a

waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**20.3** The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

#### **ARTICLE 21 - SUCCESSORS AND ASSIGNS**

The County and Consultant each binds itself and its director, officers, partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.

#### **ARTICLE 22 - CONTINGENT FEES**

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

#### **ARTICLE 23 - OWNERSHIP OF DOCUMENTS**

Consultant shall be required to work in harmony with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the County upon completion for its use and distribution as may be deemed appropriate by the County.

**ARTICLE 24 - FUNDING**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the County Commission of the County of Nassau in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

**ARTICLE 25 - NOTICE**

**25.1** Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

**COUNTY**

Charlotte Young, Contract Manager  
Nassau County Contract Management  
96135 Nassau Place, Suite 6  
Yulee, Florida 32097  
904-491-7377  
Fax: 904-321-2658  
cyoung@nassaucountyfl.com

With a copy to the County Attorney at the same address.

**CONSULTANT:**

Virgil E. Rook, PE, Senior Project Engineer  
CDM Smith Inc.  
7029-1 Commonwealth Avenue  
Jacksonville, FL 32220  
407-468-6240  
rookve@cdmsmith.com

**25.2** Notices shall be effective when received at the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any party by written notice to the other party. Facsimile is acceptable notice effective when received, however, facsimiles received (i.e.; printed)

after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

**25.3** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and County.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

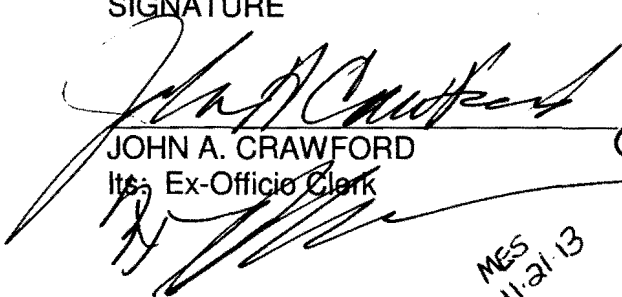
**Nassau County,  
Board of County Commissioners**

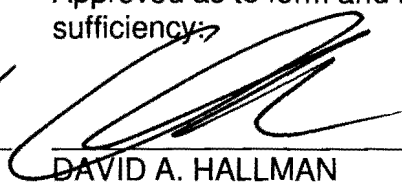
  
\_\_\_\_\_  
DANIEL B. LEEPER  
Its: Chair

Date: 11-20-13

ATTEST TO CHAIR  
SIGNATURE

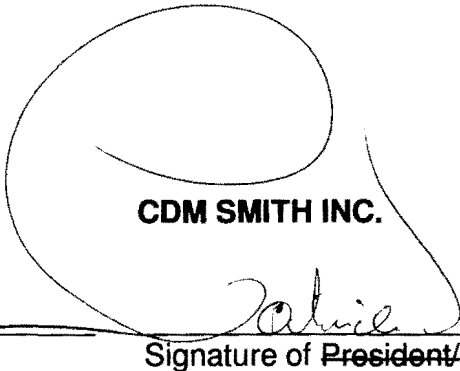
Approved as to form and legal  
sufficiency:

  
\_\_\_\_\_  
JOHN A. CRAWFORD  
Its: Ex-Officio Clerk

  
\_\_\_\_\_  
DAVID A. HALLMAN

MES  
11-21-13

ATTEST:



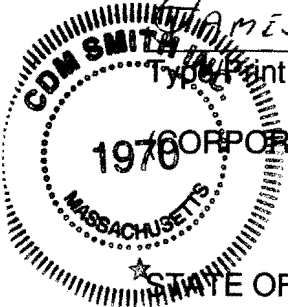
CDM SMITH INC.

James S. Lackman  
(Corporate Secretary)

Patrick R. Victor  
Signature of ~~President/Owner~~ Vice President

JAMES S. LACKMAN  
Type/Print Name of Corporate Secy.

Patrick R. Victor  
Type/Print Name of ~~President/Owner~~ Vice President



Date: October 24, 2013

CORPORATE ACKNOWLEDGEMENT

STATE OF FLORIDA :  
  :SS  
COUNTY OF DUVAL :

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared PATRICK VICTOR, of CDM Smith Inc. A MASSACHUSETTS Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 24th day of OCTOBER, 2013.

Cheryl A. Gullotto  
Signature of Notary Public  
State of Florida at Large

Print, Type or Stamp  
Name of Notary Public



CHERYL A. GULLOTTO  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# EE098258  
Expires 7/24/2015

- Personally known to me or
- Produced Identification

\_\_\_\_\_ Type of I.D. Produced

- DID take an oath, or
- DID NOT take an oath.

10/23/13

**ATTACHMENT "A"**  
**Consultant Scope of Services for**  
**Construction Engineering Inspection (CEI) Services**  
**Board of County Commissioners, Nassau County, Florida**

**1. SAMPLING AND TESTING**

- 1.1 The Consultant shall perform sampling and testing of component materials and completed work in accordance with the Construction Contract documents for roadway reconstruction utilizing Full Depth Reclamation (FDR) procedures. The minimum sampling frequencies set out in the Department's Materials Sampling, Testing and Reporting Guide and the Contract Documents shall be met. In complying with the aforementioned guide, the Consultant shall provide daily surveillance of the Contractor's Quality Control activities at the project site and perform the sampling and testing of materials and completed work items that are normally done in the vicinity of the project for verification and acceptance.
- 1.2 The Consultant shall be specifically responsible for job control samples determining the acceptability of all materials, soil cement and/or soil with emulsion mix designs and completed work items on the basis of either test results or verification of a certification, certified mill analysis, DOT label, DOT stamp, etc.
- 1.3 Nassau County will monitor the effectiveness of the Consultant's testing procedures through surveillance and obtaining and testing independent assurance samples.
- 1.4 Sampling, testing and laboratory methods shall be as required by the FDOT Standard Specifications, Supplemental Specifications or as modified by the Supplementary Conditions & General Requirements of the Construction Contract.
- 1.5 Documentation reports on sampling and testing performed by the Consultant shall be submitted to responsible parties during the same week that the construction work is done.
- 1.6 The Consultant shall be responsible for transporting samples to be tested.
- 1.7 The Consultant will compare verification testing test results and with the contractors Quality Control testing information and notify Nassau County of any failing samples.
- 1.8 **Testing Laboratory** must be FDOT approved.

**2.0 QUALITY ASSURANCE CERTIFICATION**

- 2.1 Services include maintaining the required level of surveillance of Contractor activities, interpreting plans, specifications, and special provisions for the Construction Contract, maintaining complete, accurate records of all activities



and events relating to the project, and properly documenting all significant project changes.

- 2.2 An officer of the Consultant firm shall certify that the inspection and documentation was done in accordance with FDOT specifications, plans, standard indexes, Department procedures, and according to the contract documents.

### 3.0 PERSONAL QUALIFICATION/REQUIREMENTS

- 3.1 **SENIOR INSPECTOR/** High school graduate or equivalent plus four (4) years of experience in construction inspection, two (2) years of which shall have been in bridge and/or roadway construction inspection To be in primary control, a Senior Inspector must have supervised two or more inspectors and must have been directly responsible for all inspection requirements related to the construction operations assigned. Must have the following:

3.1.1 Qualifications:

CTQP Asphalt Roadway Level I (If applicable)  
CTQP Asphalt Roadway Level II (If applicable)  
CTQP Earthwork Construction Inspection Level I  
CTQP Earthwork Construction Inspection Level II  
FDOT Intermediate MOT  
CTQP Final Estimates Level I

- 3.1.2 Responsible for performing CEI services for the project which will consist of roadway construction utilizing conventional paving, roadway widening, Full Depth Reclamation (FDR) method of sub-grade and base preparation, intersection modifications (including signalization), bridge/culvert repair and construction inspection, signing and marking and support of the County's Pavement Management Program, as requested. Including field surveying and construction layout, making, and checking engineering computations, inspecting construction work, and conducting field tests and is responsible for coordinating and managing the lower level inspectors. Work is performed under the general supervision of the Nassau County.

- 3.2 **INSPECTOR/-** High school graduate or equivalent plus two (2) years experience in construction inspection, one (1) year of which shall have been in bridge and/or roadway construction inspection, plus the following:

3.2.1 Qualifications:

CTQP Asphalt Roadway Level I (If applicable)  
CTQP Earthwork Construction Inspection Level I  
CTQP Final Estimates Level I  
IMSA Traffic Signal Technician Level I (Note: No later than one year from execution of the contract, consultant must provide an IMSA Traffic Signal Inspector for any assigned Work Authorizations which include signalization elements in the project)

CDM Smith Inc.

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- 3.2.2 Responsible for performing assignments in assisting Senior Inspector in the performance of their duties. Receive general supervision from the Senior Inspector who reviews work while in progress. Civil Engineering graduates must obtain certifications within the first year of working as an inspector or Engineer Intern. Exceptions will be permitted on a case-by-case basis so long as qualifications and certifications are appropriate for specific inspection duties.



Nassau County  
 Construction Engineering & Inspection Services  
 Bid No. NC13-007

Classification	Hourly Rate	Audited Overhead	Operating Margin	Loaded Billing Rate
Sr. Project Engineer	\$58.50	171.86%	10.00%	\$164.89
Project Administrator	\$45.19	171.86%	10.00%	\$127.37
Contract Support Specialist	\$31.36	171.86%	10.00%	\$88.39
Sr. Inspector	\$31.52	171.86%	10.00%	\$88.84
Sr. Inspector (Overtime)				\$104.60
Inspector	\$19.08	171.86%	10.00%	\$53.78
Inspector (Overtime)				\$63.32
Administrative Assistant	\$16.02	171.86%	10.00%	\$45.15

Overtime is in excess of 40 hours a week.