

**AMENDMENT NO. 2
TO AGREEMENT
For
Construction Materials Testing and Engineering Services**

This AGREEMENT is between the City of Corpus Christi, Texas, a Texas home-rule municipal corporation ("CITY"), acting through its duly authorized City Manager or designee ("City Engineer"), and **ROCK ENGINEERING & TESTING LABORATORY INC.**, a Texas corporation or partnership ("LAB"), acting through its duly authorized representative who is Curtis A. Rock, Business Development Manager, which agree as follows:

Original Testing Agreement	February 8, 2011	Administrative Approval	\$6,890.00
Amendment No. 1	February 18, 2013	Administrative Approval	\$3,400.00

1. **DECLARATIONS:** "CITY" desires to engage "LAB" to provide services in connection with City's project, described as follows: **Bayfront Development Plan, Phase 3 (Project No. 6511)** ("PROJECT").

2. **SCOPE OF WORK:** "LAB" shall provide services to the PROJECT in accordance with the accompanying Scope of Services and Fee Schedule attached as "Exhibit A". Monthly invoices will be submitted in accordance with Exhibit "B"

3. **FEE:** The "CITY" agrees to pay the "LAB" for services provided in accordance with Exhibit "A", Scope of Services and Fee Schedule under this AGREEMENT, a total fee not to exceed **\$102,500.00 (One Hundred Two Thousand Five Hundred Dollars and Zero Cents)** for a total restated fee not to exceed **\$112,790.00 (One Hundred Twelve Thousand Seven Hundred Ninety Dollars and Zero Cents)**.

CITY OF CORPUS CHRISTI

Oscar R. Martinez (Date)
Assistant City Manager

RECOMMENDED

Dose 6/27/13
Daniel Biles, P.E. (Date)
Director of Engineering Services

Michael Morris 6/27/13
Michael Morris (Date)
Director of Parks and Recreation

APPROVED AS TO FORM

Office of Mgmt and Budget (Date)

ATTEST

Armando Chapa, City Secretary (Date)

ROCK ENGINEERING & TESTING LABORATORY

Curtis Rock 6-18-13
Curtis A. Rock (Date)
Business Development Manager
6817 Leopard Street
Corpus Christi, TX 78409
(361) 883-4555 Office
(361) 883-4711 Fax

Project Number: <u>6511</u>
Funding Source: <u>550920-3126-00000-170678</u>
Fund Name: <u>Bayfront Development 09 GO CIP</u>
Encumbrance Number:

ENTERED

JUN 18 2013

CONTRACT MANAGERS: 



- GEOTECHNICAL ENGINEERING
- CONSTRUCTION MATERIALS
ENGINEERING & TESTING
- SOILS • ASPHALT • CONCRETE

October 23, 2012

Hargreaves Associates
398 Kansas Street
San Francisco, California 94103

Attention: Mr. Erik Hanson

**SUBJECT: PROPOSAL TO PERFORM A SUBSURFACE INVESTIGATION AND
LABORATORY TESTING PROGRAM AND PROVIDE FOUNDATION AND
PAVEMENT RECOMMENDATIONS FOR THE PROPOSED
DESTINATION BAYFRONT
South Shoreline Boulevard
Corpus Christi, Texas
RETL Proposal Number: P100212A (Revision No. 1)**

Dear Mr. Hanson,

Rock Engineering and Testing Laboratory, Inc. (RETL) (TBPE Firm No. 2101) is pleased to submit the following proposal to perform a subsurface investigation and laboratory testing program and provide foundation and pavement recommendations for the proposed Destination Bayfront project to be constructed near South Shoreline Boulevard located in Corpus Christi, Texas.

Based on the information provided to RETL, the project will include the construction of a new bayfront recreational area along the existing seawall and marina. The project scope is based on the information provided in the 100% Schematic Design Key Plan dated October 19, 2012. The proposed bayfront will include upgrades and reconstruction of the existing seawall, addition of multiple restaurants, retail buildings and entertainment structures, upgrades to the existing Sherrill Park and dredging of the existing marina basin. The proposed buildings and structures are expected to have eave heights of approximately 18-feet and utilize wooden timber pile foundations. The dredging depth of the marina is unknown at this time.

A pier approximately 60-feet in width by 250-feet in length will also be constructed near the existing beach and bulkhead. The pier is expected to include multiple retail buildings and shade canopies. Sheet piling will be utilized for stabilization of the existing beach along the proposed pier.

Additionally, parking and drive areas will be constructed to facilitate mainly passenger vehicles and light trucks. Light poles and sitting areas will also be constructed throughout the site.

It is understood that existing structures and pavements will be demolished and removed from the project site. The proposed structures and parking and drive areas may be constructed within the vicinity of the demolished structures.

ROCK ENGINEERING & TESTING LABORATORY, INC.
6817 LEOPARD STREET • CORPUS CHRISTI, TEXAS 78409
OFFICE: (361) 883-4555 • FAX: (361) 883-4711 • www.rocktesting.com

EXHIBIT "A"
Page 1 of 4

Based on the project description provided above and RETL's experience with soils in the vicinity of the project, RETL proposes the following scope of work:

PROPOSED STRUCTURE	NO. OF BORINGS PER STRUCTURES	BORING DEPTH (ft)	LINEAR FEET (LF)
Proposed Play Area Village South	1	100	100
Proposed Play Area Village North	1	100	100
Proposed Zocalo, Pier & Stage	2	100	200
Proposed Sherrill Park Village	2	100	200
Proposed Parking/Drive Areas	4	7	28
Building Footprint/Landward Structures	12	50	600
Marina Basin	5	10	50
SUM OF LINEAR FOOTAGE			1,278

The boring depth for the Building footprint/Landward Structures was determined using previous experience with soils in the area. Marina basin boring depth was determined on the assumption that the marina would be dredged to a depth of 10-feet. The scope of work is outlined below.

Scope of the Proposed Subsurface Investigation

- RETL requests that the boring location is staked in the field prior to the field investigation or a site plan is provided to RETL showing the proposed structure in reference to existing predominate site features to aid RETL in locating the boring in the field.
- Coordination with Texas One Call will be performed by RETL to identify underground utilities in the proximity of the boring locations. The borings will be relocated if necessary.
- The client shall perform due diligence to assure RETL that the boring locations are accessible and clear of obstructions, such as fences, shrubs and trees. The borings will be relocated if necessary.
- A truck mounted drilling rig will be utilized to access the boring locations.
- Soil samples will be obtained at predetermined depths, unless subsurface conditions warrant additional sampling.
- The borings will be advanced to the depths specified above.
- Disturbed soil samples will be obtained employing split-barrel sampling procedures in general accordance with the procedures for "Penetration Test and Split-Barrel Sampling of Soils, (ASTM D1586)."
- Undisturbed soil samples will be obtained using thin-wall tube sampling procedures in accordance with "Thin Walled Tube Sampling of Soils, (ASTM D1587)."
- The shear strength of cohesive soils will be estimated using a hand penetrometer.
- Standard penetration tests (SPT) will be recorded in granular soils.
- Sampling and testing at the marina basin will be performed in water depths of approximately 2 to 7-feet.
- The marine borings will be extended to the depths specified above below the water surface at the time of the field investigation or upon refusal of the soil sampling device.
- RETL will provide a 3-man crew and boat to perform the proposed marine borings.
- RETL will perform limited soil sample collection by means of a sediment sampler at each marine boring location.

ROCK ENGINEERING & TESTING LABORATORY, INC.
 6817 LEOPARD STREET • CORPUS CHRISTI, TEXAS 78409
 OFFICE: (361) 883-4555 • FAX: (361) 883-4711 • www.rocktesting.com

- GPS coordinates, obtained in the field at all sample locations, will be recorded using a commercially available Garmin handheld GPS model Etrex Venture using NAD 83 map datum.
- Groundwater readings will be obtained during drilling and immediately upon completion of the drilling operations.
- After obtaining the delayed groundwater readings, the open boreholes will be backfilled with excess soils obtained during the drilling operations and patched with asphalt cold patch mix or eucocrete, where applicable.

Scope of Laboratory Testing Program

- Supplementary Visual Classification (ASTM D2487)
- Water Content Tests (ASTM D2216)
- Atterberg Limits Tests (ASTM D4318)
- Unconfined Compressive Strength Tests (ASTM D2166)
- Percent Material Finer Than The #200 Sieve Tests (ASTM D1140)
- Grain Size Distribution/Particle Size Analysis of Soils (ASTM D422)

All phases of the laboratory testing program will be performed in general accordance with applicable ASTM Specifications. All field and laboratory test results will be included on the boring logs or provided in the report.

Projected Schedule

After authorization, it is estimated that the drilling operations can be completed within 12 to 15 days and the final report will be submitted within four weeks of the completed fieldwork. RETL will consult with the engineers as field and laboratory test results become available.

Geotechnical Engineering Report

In addition to the field and laboratory testing, a geotechnical engineering report will be prepared that includes a description of the field exploration and laboratory tests, boring logs, a discussion of the engineering properties of the subsurface materials encountered and foundation and pavement recommendations. The report will include items indicated in the memo titled Destination Bayfront Request for Geotechnical Information provided by Mr. Larry Rickels, P.E., representing Datum Engineers, Inc.

Fees and Limitations

The total fee to perform the scope of work outlined above is **\$102,500.00**. Additional drilling, if required due to the subsurface soil conditions encountered, will be performed at a rate of \$75.00 per linear foot of drilling.

Services provided by RETL under this Agreement will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

ROCK ENGINEERING & TESTING LABORATORY, INC.
6817 LEOPARD STREET • CORPUS CHRISTI, TEXAS 78409
OFFICE: (361) 883-4555 • FAX: (361) 883-4711 • www.rocktesting.com

The Client shall provide for RETL's right to enter the property owned by the Client and/or others and assure that the boring locations are clear of underground utilities and accessible to drilling equipment in order for RETL to fulfill the Scope of Services included hereunder.

The Parties to this agreement agree that if any claim is made that RETL failed to comply with any term of this agreement or that it failed to perform its work and/or duties under this agreement properly, the client, upon proof that there was some failure to comply or some mistake in the performance of the work, shall not be entitled to recover any sum greater than the amount paid by the client to RETL for the service performed by RETL or \$25,000.00 whichever is less.

In addition, and notwithstanding any other provisions of this Agreement, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless RETL, his or her officers, directors, employees, agents and sub consultants from and against all damage, liability or cost, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with this project or the performance by any of the above named parties of the services under this Agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of RETL.

Either the Client or RETL may terminate this Agreement at any time with or without cause upon giving the other party 10-calendar days prior written notice. The Client shall within 10 calendar days of termination pay RETL for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

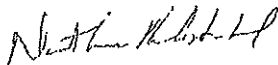
Closing

If you are in agreement with our proposed scope of work, please authorize us to proceed by signing in the space below and returning one copy to us.

Thank you for your consideration of our firm to assist you with this project. If you have any questions, or comments, please call at (361) 883-4555.

Sincerely,

ACCEPTED AND APPROVED



By _____

Nathan Ruckstuhl, EIT
Geotechnical Project Manager

Print _____

Date _____

For payment of services, invoice to:

Firm: _____ Attn: _____

Address: _____ Title: _____

City: _____ State: _____ Zip Code: _____ Phone: _____ Fax: _____

E-mail address: _____

ROCK ENGINEERING & TESTING LABORATORY, INC.
6817 LEOPARD STREET • CORPUS CHRISTI, TEXAS 78409
OFFICE: (361) 883-4555 • FAX: (361) 883-4711 • www.rocktesting.com

Exhibit B
Mandatory Requirements
(Revised November, 2005)

INDEMNIFICATION AND HOLD HARMLESS

Consultant agrees to indemnify, save harmless and defend the City of Corpus Christi, and its officers, agents, servants and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorneys' fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property, to the extent caused by Consultant's negligent performance of services covered by this contract. The foregoing indemnity shall apply except if such injury, death or damage is caused by the sole or concurrent negligence of the City of Corpus Christi, its officers, agents, servants, or employees, or any other person indemnified hereunder.

TERMS AND CONDITIONS TO AGREEMENT

ARTICLE 1. SERVICES: "LAB" will:

- 1.1 Provide only those services requested by "CITY ENGINEER" that, in the opinion of "LAB", lie within the technical or professional areas of expertise of "LAB" and which "LAB" is adequately staffed and equipped to perform.
- 1.2 Perform technical services under the supervision of a licensed professional engineer and in compliance with the basic requirements of the appropriate standards of the American Society for Testing and Materials, where applicable and other standards designated in writing by the "CITY ENGINEER."
- 1.3 Promptly submit formal reports (printed and electronic copies) of tests, inspections and services performed indicating, where applicable, compliance with the PROJECT specifications or other contract documents. Such reports must be complete and factual, citing the tests performed, methods employed, values obtained, and parts of the structure of THE PROJECT area subjected to any testing.
- 1.4 Utilize testing equipment which has been calibrated according to applicable standards and, upon request, submit to the "CITY ENGINEER", or his authorized representative, documentation of such calibration.

Secure representative samples of those materials that the City's Contractor proposes to use which require testing, together with relevant data concerning such materials including the point of origin and supplier.
- 1.5 Consider reports to be confidential, and distribute reports only to those persons, organizations or agencies specifically designated in writing by the "CITY ENGINEER".
- 1.6 Retain records relating to services performed for "CITY" for a period of two years following submission of any reports, during which period the records will be made available to the "CITY" at all reasonable times.
- 1.7 Pay salaries, wages, expenses, social security taxes, federal and state unemployment taxes, and any other similar payroll taxes relating to the services.

ARTICLE 2. CITY RESPONSIBILITIES: City Engineer or authorized representative will:

- 2.1 Provide "LAB" with all plans, specifications, addenda, change orders, approved shop drawings and other information for the proper performance of services by "LAB".
- 2.2 Issue authorization in writing giving "LAB" free access to THE PROJECT site, and to all shops or yards where materials are prepared or stored.
- 2.3 Designate in writing those persons or firms which will act as the "CITY's" representative with respect to "LAB'S" services to be performed under this AGREEMENT and which must be promptly notified by "LAB" when it appears that materials tested or inspected are in non-compliance. Only the "CITY ENGINEER" or his designated representative have authority to transmit instructions, receive information and data, interpret and define the CITY's policies and decisions with respect to THE PROJECT. "LAB" acknowledges that certain "CITY" representatives may have different types of authority concerning THE PROJECT.

- 2.4 Advise "LAB" sufficiently in advance of any operations so as to allow for assignment of personnel by "LAB" for completion of the required services. Such advance notice will be in accordance with that established by mutual agreement of the parties.
- 2.5 Direct THE PROJECT contractor, either by the Construction Contract or direct written order to:
- (a) Stop work at the appropriate times for "LAB" to perform contracted services;
 - (b) Furnish such labor and all facilities needed by "LAB" to obtain and handle samples at THE PROJECT and to facilitate the specified inspection and tests;
 - (c) Provide and maintain for use of "LAB" adequate space at THE PROJECT for safe storage and proper curing of test specimens which must remain on THE PROJECT site prior to, during, and up to 60 days after testing.

ARTICLE 3. GENERAL CONDITIONS

- 3.1 "LAB", by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities with regard to THE PROJECT which, by custom or contract, are vested in THE PROJECT architects, design engineers, or any other design agencies or authorities.
- 3.2 "LAB" is not authorized to supervise, alter, relax, enlarge or release any requirement of THE PROJECT specifications or other contract documents nor to approve or accept any portion of the work. "LAB" does not have the right of rejection or the right to stop the work. "CITY ENGINEER" will direct THE PROJECT contractor to stop work at appropriate times for "LAB" to conduct the sampling, testing, or inspection of operations covered by the AGREEMENT.

ARTICLE 4. FIELD MONITORING AND TESTING

- 4.1 "CITY" and "LAB" agree that "LAB" will be on-site to perform inspections for contracted services. The "CITY" and "LAB" also agree that "LAB" will not assume responsibility for PROJECT Contractor's means, methods, techniques, sequences or procedures of construction, and it is understood that the final services provided by "LAB" will not relieve the PROJECT Contractor of his responsibilities for performing the work in accordance with THE PROJECT plans and specifications. For the purposes of this AGREEMENT, the word "inspection" is used to mean periodic observation of the work and the conducting of tests by "LAB" as specified in the AGREEMENT. Continuous monitoring by "LAB" or its subcontractors does not mean that "LAB" is approving placement of materials. Inspection is not and should not be construed to be a warranty by "LAB" to the "CITY" or any other party.
- 4.2 Samples collected or tested by "LAB" remain the property of the "CITY" while in the custody of the "LAB". "LAB" will retain the samples for a period of 60 days following the date of submission of any report related to the sample. Following the retention period, "LAB" will dispose of non-hazardous samples, and return hazardous, acutely toxic, or radioactive samples and samples containers and residues to "CITY". "CITY" agrees to accept such samples and samples containers.

ARTICLE 5. STANDARD OF CARE AND WARRANTY

Services performed by "LAB" will be conducted in a manner consistent with that level of care and skill ordinarily exercised by reputable members of the profession currently practicing under similar conditions in the same locality. No other warranty either expressed or implied is made or intended by the AGREEMENT or any reports. "LAB" will not be responsible for the interpretation or use by others of data developed by "LAB".

ARTICLE 6. SAFETY

"CITY" and "LAB" agree that, in accordance with the generally accepted construction practice, the PROJECT'S general contractor will be solely and completely responsible for working conditions on THE PROJECT, including safety of all persons and property during the performance of the work, and for compliance with all municipal, state, and federal laws, rules and regulations, including OSHA. The duty of "LAB" in providing services is not, therefore, to include any review of, or responsibility for, the adequacy of the PROJECT'S general contractor's safety measures in, on, or near THE PROJECT site.

ARTICLE 7. INVOICES AND PAYMENT

"LAB" will submit progress invoices to "CITY ENGINEER" monthly and final invoice upon completion of services. Each invoice is due and payable by "CITY" within 30 days of receipt and approval to pay by the City Engineer.

ARTICLE 8. EXTENT OF AGREEMENT

- 8.1 This AGREEMENT, including Exhibit "A" and these terms and conditions, represents the entire AGREEMENT between "CITY" and "LAB" and supersedes all prior negotiation, representations or agreements, written or oral. This AGREEMENT may be amended only by a written instrument signed by duly authorized representative of "CITY" and "LAB". If any conflict occurs between these terms and conditions and this AGREEMENT, these terms and conditions are controlling.
- 8.2 In the event that any one or more of the provisions contained in this AGREEMENT are for any reason held invalid, illegal or unenforceable in any respect, the remaining terms will be in full effect and this AGREEMENT will be construed as if the invalid or unenforceable matters were never included in this AGREEMENT. No waiver of any default will be a waiver of any future default.
- 8.3 Neither party will assign this AGREEMENT without the express written approval of the other, but "LAB" may subcontract laboratory procedures as "LAB" deems necessary to meet the obligations of this AGREEMENT.

Bayfront Development Plan Phase 3

Project No. 6511

Invoice No. 12345

Invoice Date:

	Contract	Amd No. 1	Amd No. 2	Contract	Amount Invoiced	Previous Invoice	Total Invoice	Percent Complete
Basic Services:								
Preliminary Phase	\$15,117	\$0	\$0	\$15,117	\$0	\$1,000	\$1,000	7%
Design Phase	20,818	0	0	20,818	1,000	500	1,500	7%
Bid Phase	0	0	0	0	0	0	0	n/a
Report Phase	14,166	0	0	14,166	0	0	0	0%
Construction Phase	0	0	0	0	0	0	0	n/a
Subtotal Basic Services	\$50,101	\$0	\$0	\$50,101	\$750	\$1,500	\$2,500	5%
Additional Services:								
Permitting	\$0	\$0	\$0	\$0	\$0	\$0	\$0	n/a
Warranty Phase	0	0	0	0	0	0	0	n/a
Inspection	9,011	0	0	9,011	0	0	0	0%
Platting Survey	29,090	0	0	29,090	0	0	0	0%
Reporting	1,294	0	0	1,294	0	0	0	0%
O & M Manuals	TBD	TBD	TBD	TBD	TBD	TBD	TBD	0%
SCADA	TBD	TBD	TBD	TBD	TBD	TBD	TBD	0%
Subtotal Additional Services	\$39,395	\$0	\$0	\$39,395	\$0	\$0	\$0	0%
Summary of Fees								
Basic Services Fees	\$50,101	\$0	\$0	\$50,101	\$750	\$1,500	\$2,500	5%
Additional Services Fees	\$39,395	0	0	\$39,395	0	0	0	0%
Total of Fees	\$89,496	\$0	\$0	\$89,496	\$750	\$1,500	\$2,500	3%

FILING REQUIREMENTS

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary.
[Ethics Ordinance Section 2-349 (d)]

CERTIFICATION

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: Curtis A. Rock Title: Business Development Manager
(Type or Print)

Signature of Certifying Person: Curtis Rock Date: 1-10-13

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Economic benefit". An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements."
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.