

AGREEMENT
for
Construction Materials Engineering Laboratory's
Inspection and Materials Testing 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 **Tolunay-Wong Engineers, Inc.**, a Texas corporation or partnership ("LAB"), acting through its duly authorized representative who is **John January, Branch Manager**, which agree as follows:

1. **DECLARATIONS:** "CITY" desires to engage "LAB" to provide services in connection with City's project, described as follows: **Williams Drive, Phase Nos. 1 and 2 – Phase 1 from Rodd Field to Nile Drive (Project No. 6466) and Phase 2 from Nile Drive to Airline Road (Project No. 6467) (Bond 2008)** ("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" and the Terms and Conditions to AGREEMENT attached as "Exhibit C".

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 **\$250,570.00 (Two Hundred Fifty Thousand Five Hundred Seventy Dollars and Zero Cents)**. LAB must submit a completed Summary Sheet with each monthly invoice in the form shown as Exhibit D. Prior to approving any payment, the City must receive a correct invoice, a completed Summary Sheet, and all appropriate supporting documentation.

4. **INDEMNIFICATION AND HOLD HARMLESS:** "LAB" agrees to indemnify, save harmless and defend the City of Corpus Christi, and its agents, servants, and employees as more fully set forth in "Exhibit B".

5. **CITY'S DISCLOSURE OF HAZARDOUS & TOXIC MATERIALS AND CONDITIONS AT THE PROJECT SITE.** To the best of the City's knowledge, based upon currently available information, the only hazardous or toxic materials, as defined by the laws and regulations of the Federal government, the state, and city which exist at the PROJECT SITE are as follows: None.

CITY OF CORPUS CHRISTI

Oscar R. Martinez (Date)
Assistant City Manager
Public Works, Utilities & Transportation

APPROVED AS TO FORM

[Signature]

Daniel Biles, P.E. 8/1/12 (Date)
Director of Engineering Services

Legal Department (Date)

[Signature]

Operating Department 8/1/12 (Date)

Office of Management and Budget (Date)

ATTEST

Armando Chapa, City Secretary (Date)

TOLUNAY-WONG ENGINEERS, INC.

[Signature]

John January 7-31-12 (Date)
Branch Manager
5233 IH 37, Suite B-7
Corpus Christi, TX 78408
(361) 884-5050 Office
(361) 884-5052 Fax

Tolunay-Wong Engineers, Inc.

5233 IH 37, Suite B-7 * Corpus Christi, TX 78408 * Phone: 361-884-5050 * Fax 361-884-5052

MATERIAL TESTING COST ESTIMATE PROPOSAL

May 31, 2012

Proposal No: P12-C173

City of Corpus Christi
Department of Engineering Services
1201 Leopard St., Suite 300
Corpus Christi, Texas 78401

Attention: Mr. Dan Biles, P.E.
Interim Director Engineering Services

Reference: Cost Estimate for Williams Drive, Phase Nos. 1 & 2
From Redfield - Airline Project Nos. 6466 & 6467
(CONCRETE OPTION)

We are pleased to submit this proposal for performing construction materials testing during the construction for the above referenced project. This proposal outlines our understanding of the project, proposed scope of work and project fees.

SCOPE OF WORK

It is our understanding that construction materials testing and inspection services will include the following services:

- Sampling of soil materials and testing for atterberg limits and moisture/density properties
- Compaction testing of soil backfill, subgrade, fill, base, HMA/C
- Groundwater sampling
- Proof-roll and compaction tests of subgrade
- HMA/C laboratory testing
- Concrete monitoring & testing
- Test report preparation and submittal
- Related laboratory testing and sample pick-up services

FEES

As you requested, we have provided a cost estimate for this project. Estimated total cost for all items anticipated were based on the standard TWE fee schedule submitted for projects with the City of Corpus Christi. Any additional services not shown on this proposal will be billed in accordance with the standard fee schedule.

Sincerely,

TOLUN Y-WONG ENGINEERS, INC.

TWE Firm No. 11-1124



Joseph Jannany
Branch Manager

Enclosure: Cost Estimate Proposal

JU/atb:

CONSTRUCTION MATERIALS TESTING COST ESTIMATE PROPOSAL

**Cost Estimate for Williams Drive, Phase Nos. 1 & 2
From Roddfield - Airline Project No. 6466 & 6467
(CONCRETE OPTION)**

<u>Description of Services</u>	<u>Quantity</u>	<u>Unit Fee</u>	<u>Unit</u>	<u>Amount</u>
<u>Soils</u>				
Soils Technician	3,500	38.00	hr	\$133,000.00
Moisture/Density Relations, ASTM D 698	10	140.00	ea	1,400.00
Atterberg Limits	10	42.00	ea	420.00
Compressive Strength Stabilized Sand	200	48.00	ea	9,600.00
Vehicle Change	500	38.00	day	19,000.00
			Subtotal	\$163,420.00

Concrete Testing

Mix Design Review	4	115.00	ea	\$460.00
Concrete Technician	800	38.00	hr	30,400.00
Cylinder Tests	800	13.00	ea	10,400.00
Sample Pick-up	100	32.00	hr	3,200.00
Vehicle Change	120	38.00	day	4,560.00
			Subtotal	\$49,020.00

Project Management

Project Engineer	100	82.00	hr	\$8,200.00
			Subtotal	\$8,200.00

Asphalt Testing

<u>Description of Services</u>	<u>Quantity</u>	<u>Unit Fee</u>	<u>Unit</u>	<u>Amount</u>
Asphalt Technician	100	38.00	hr	\$3,800.00
Extraction/Gradation	2	120.00	ea	240.00
Specific Gravity	2	40.00	ea	80.00
Stability	2	40.00	ea	80.00
Bulk Density	2	20.00	ea	40.00
Molding Specimens	2	40.00	ea	80.00
Thickness Cores	2	105.00	ea	210.00
Vehicle Charge	10	38.00	day	380.00
			Subtotal	\$4,910.00

Subgrade Testing

Soil Technician	400	38.00	hr	\$15,200.00
Sieve Analysis	50	60.00	ea	3,000.00
Moisture/Density Relations, ASTM D 1557	10	140.00	ea	1,400.00
Atterberg Limits	10	42.00	ea	420.00
		Subtotal		\$20,020.00

Groundwater Testing

Base Line Testing	3	1,000.00	ea	\$3,000.00
Additional Testing (if needed)	2	1,000.00	ea	2,000.00
		Subtotal		\$5,000.00
		Total		\$250,570.00

**Exhibit B
Mandatory Requirements
(Revised August, 2008)**

INDEMNIFICATION AND HOLD HARMLESS

Consultant agrees to indemnify, save harmless and defend the City of Corpus Christi, and its 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 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, which may arise or which may be alleged to have arisen out of or in connection with the work 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 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.

COMPLETE PROJECT NAME

Project No. XXXX

Invoice No. 12345

Invoice Date:

	Contract	Amd No. 1	Amd No. 2	Total Contract	Amount Invoiced	Previous Invoice	Total Invoice	Percent Complete
Basic Services:	\$1,000	\$0	\$0	\$1,000	\$0	\$1,000	\$1,000	100%
Investigations & Analysis Report	2,000	1,000	0	3,000	1,000	500	1,500	50%
	\$3,000	\$1,000	\$0	\$4,000	\$750	\$1,500	\$2,500	63%
Additional Services:								
Testing & Inspection	\$2,000	\$0	\$0	\$2,000	\$500	\$0	\$500	25%
Subtotal Additional Services	\$2,000	\$0	\$0	\$2,000	\$500	\$0	\$500	25%
Summary of Fees								
Basic Services Fees	\$3,000	\$1,000	\$0	\$4,000	\$750	\$1,500	\$2,500	63%
Additional Services Fees	2,000	0	0	2,000	500	0	500	25%
Total of Fees	\$5,000	\$1,000	\$0	\$6,000	\$1,250	\$1,500	\$3,000	50%

Basic Services:
Investigations & Analysis Report

Additional Services:
Testing & Inspection
Subtotal Additional Services

Summary of Fees
Basic Services Fees
Additional Services Fees
Total of Fees

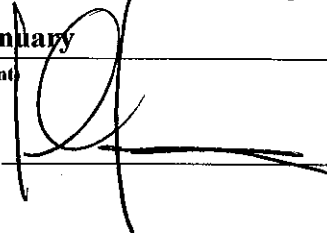
FILING REQUIREMENTS

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: John January **Title:** Branch Manager
(Type or Print)

Signature of Certifying Person:  **Date:** 7-31-12

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.