

STATE OF TEXAS §
COUNTY OF FORT BEND §

KNOW ALL BY THESE PRESENTS:

SOQ 14-027
THIRD AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES
NINYO & MOORE

THIS THIRD AMENDMENT, is made and entered into by and between Fort Bend County (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Ninyo & Moore, (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WHEREAS, the parties have executed and accepted that certain Agreement for Professional Services, on or about October 28, 2014, and as amended on or about December 2, 2014 and September 26, 2017, (the “Agreement”), attached herein as Exhibit A; and

WHEREAS, the Notice to Proceed was issued on October 14, 2015, which commenced the start of this Agreement; and

WHEREAS, the following changes are incorporated as if a part of the original Agreement and incorporated by reference in the same as if fully set forth verbatim herein;

NOW, THEREFORE, the parties do mutually agree as follows:

1. The Scope of Work for Geotechnical Services shall be amended to include:
"Contractor shall perform additional environmental work using soil information from their previous borings to provide vertical and lateral capacities for drilled piers that will be used to support a sound wall. Contractor will analyze 30 and 36 inches diameter piers based on the criteria provided by County's Contracted Design Engineering Firm (Lockwood Andrew Newman) in their email dated December 5, 2017. The contractor will provide deflection, shear and bending moment diagrams using the computer program LPILE." (The email from December 5, 2017 is attached hereto as Exhibit B.)
2. The Total Maximum Compensation for the Agreement will be increased by four thousand eight hundred dollars and no cents (\$4,800.00) to compensate for additional Geotechnical Services as described in this Amendment, bringing the new Total Maximum Compensation to three hundred four thousand eight hundred dollars and no/100 (\$304,800.00).
3. Total cost for additional Geotechnical Services shall not exceed (four thousand eight hundred dollars and no cents (\$4,800.00).
4. All work shall be completed and findings furnished to County within 10 days of execution of this Amendment.

Except as provided herein, all terms and conditions of the Agreement, including any addenda or amendments, not modified shall remain in full force and effect. If there is a conflict

between this Third Amendment and the Agreement, the provisions of this Third Amendment shall prevail with regard to the conflict.

IN WITNESS WHEREOF, the parties put their hands to this Amendment on the dates indicated below.

FORT BEND COUNTY

NINYO & MOORE

Robert E. Hebert, County Judge



Authorized Agent- Signature

Date

Jay T. Sunderwala, P.E.

Authorized Agent- Printed Name

ATTEST:

Managing Principal Engineer

Title

Laura Richard, County Clerk

1/18/2018

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert E. Sturdivant, County Auditor

EXHIBIT A: AGREEMENT AND AMENDMENTS

EXHIBIT B: EMAIL DATED DEC. 5, 2017

EXHIBIT A

§

§

5

IN WITNESS WHEREOF, the parties put their hands to this Amendment on the dates indicated below.

FORT BEND COUNTY


Robert E. Hebert, County Judge

Date

ATTEST:

Laura Richard, County Clerk

NINYO & MOORE



Authorized Agent- Signature

Jay T. Sunderwala

Authorized Agent- Printed Name

Managing Principal Engineer

Title

September 12, 2017

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ _____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

EXHIBIT A: AGREEMENT AND FIRST AMENDMENT
EXHIBIT B: NEW SCHEDULE OF FEES

hna i:\agreements\2017 agreements\public transportation\soq 14-027 ninyo and moore\second amendment to agreement (09.05.17).docx

EXHIBIT A

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §



**AMENDMENT TO AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
BETWEEN FORT BEND COUNTY AND NINYO & MOORE, INC.**

THIS AMENDMENT is entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Ninyo & Moore, Inc., (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

THAT, WHEREAS, the parties have executed and accepted that certain Agreement for Professional Engineering Services Between Fort Bend County and Ninyo & Moore, Inc. on October 28, 2014 (hereinafter the "Agreement"), attached hereto as Exhibit A; and

WHEREAS, the parties desire to amend the Agreement to include federally required clauses:

NOW, THEREFORE, the parties do mutually agree to amend the Agreement to add the following:

1. **No Government Obligation to Third Parties.** Fort Bend County and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Fort Bend County, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
2. **Program Fraud and False or Fraudulent Statement and Related Acts.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose

the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. **Access to Records and Reports.** The Contractor agrees to provide Fort Bend County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until Fort Bend County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

4. **Federal Changes.** The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Fort Bend County and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. **Civil Rights Requirements.** The following requirements apply to the underlying contract:

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,"

29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. **Disadvantaged Business Enterprise (DBE).** This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Fort Bend County deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from Fort Bend County. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Contract is satisfactorily completed.

The Contractor must promptly notify Fort Bend County whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of Fort Bend County.

7. **Incorporation of Federal Transit Administration (FTA) Terms.** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All

contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Fort Bend County requests which would cause Fort Bend County to be in violation of the FTA terms and conditions.

8. **Government-Wide Debarment and Suspension (Non-Procurement).** This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Fort Bend County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Fort Bend County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. **Lobbying.** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

10. **Clean Air.** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. **Clean Water.** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

12. **Energy Conservation Requirements.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

13. **Seismic Safety.** Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

14. **Access for Individuals with Disabilities.** Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and

services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, Contractor agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

15. **Dispute Resolution.** The parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement by negotiation between the parties. In the event the dispute cannot be settled through negotiation, the parties agree to submit the dispute to mediation.


The party requesting mediation shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within ten (10) days of the receipt of such notice, such dispute shall be submitted for mediation.

Each party shall be responsible for its own costs associated with the mediation.

The requirement to seek mediation shall be a condition required before filing an action at law or in equity, unless to do so would prevent either party from seeking relief in a court of law or equity under any applicable statute of limitations.


This Amendment shall be effective on the date of execution by the last party. Except as provided herein, all terms and conditions of the Agreement shall remain unchanged.

FORT BEND COUNTY



Robert E. Hebert, County Judge

12-2-2014
Date

ATTEST:


Dianne Wilson, County Clerk

NINYO & MOORE, INC.


Authorized Agent- Signature

JAY T. SUNOFENSKI
Authorized Agent- Printed Name

PRINCIPAL ENGINEER
Title

11/21/14
Date



I:\MDS\Amendment.Ninyo&Moore



STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Ninyo & Moore, Inc., (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide geotechnical engineering services during advanced planning activities and construction materials testing services related to construction of an Administration and Operations Facility for services provided by the Fort Bend County Public Transportation Department (hereinafter "Services"); and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Contractor shall render Services to County as defined in the Scope of Services (attached hereto as Exhibit A).

Section 2. Personnel

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 Contractor's fees shall be calculated at the rates set forth in the attached exhibits. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is three hundred thousand dollars and no/100 (\$300,000.00) to include any third-party expenses which will be reimbursed at cost. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order. The Maximum Compensation shall be allocated as follows:

3.1.1. \$30,000.00 lump sum fee for Geotechnical Services – Base Scope of Work

3.1.2. \$270,000.00 for Construction Materials Testing

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County one (1) electronic (pdf) copy and two (2) original hard copies of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of three hundred thousand dollars and no/100 (\$300,000.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed three hundred thousand dollars and no/100 (\$300,000.00).

Section 5. Time of Performance

Time for performance of the Scope of Services under this Agreement shall begin with receipt of the Notice to Proceed and end no later than twenty-four (24) months thereafter.

Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience

7.1.1 County may terminate this Agreement at any time upon forty eight (48) hours written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County.

Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

10.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.4 Professional Liability insurance with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Section 11. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

THE PARTIES AGREE THAT UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, COUNTY CANNOT ENTER INTO AN AGREEMENT WHEREBY COUNTY AGREES TO INDEMNIFY OR HOLD HARMLESS ANOTHER PARTY; THEREFORE, ALL REFERENCES OF ANY KIND IN THE ATTACHED EXHIBIT A TO COUNTY DEFENDING, INDEMNIFYING, HOLDING OR SAVING HARMLESS CONTRACTOR FOR ANY REASON ARE HEREBY DELETED.

Section 12. Confidential and Proprietary Information

12.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its

disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information

should not be disclosed. The parties expressly agree that this Agreement is not proprietary or confidential information.

Section 13. Independent Contractor

13.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 14. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Public Transportation Department 301 Jackson Street Richmond, Texas 77469
With a copy to:	Fort Bend County Attn: County Judge 301 Jackson Street, Suite 719 Richmond, Texas 77469
Contractor:	Ninyo & Moore, Inc. 2313 West Sam Houston Parkway North, Suite 119 Houston, Texas 77043

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Performance Warranty

16.1 Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

16.2 Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

Section 17. Assignment

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 19. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Captions


The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the ____ day of _____, 2014.

FORT BEND COUNTY

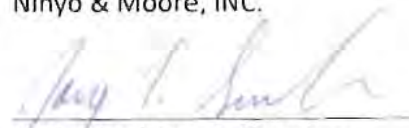

Robert E. Hebert, County Judge

10-28-2014
Date

ATTEST:


Dianne Wilson, County Clerk

Ninyo & Moore, INC.

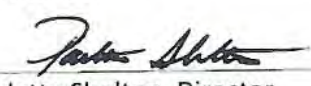

Authorized Agent- Signature

JAY T. SUROJEWSKI
Authorized Agent- Printed Name

Principal
Title

10/10/14
Date

APPROVED:


Paulette Shelton, Director
Public Transportation



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 80,000 to accomplish and pay the obligation of Fort Bend County under this contract.



Robert Edward Sturdivant, County Auditor

EXHIBIT A

SCOPE OF WORK

SITE AND PROJECT DESCRIPTION

The project consists of the development of approximately 12 acres for the construction of several structures and paved areas for a Bus Maintenance Facility. The development will consist of an approximately 18,000 square feet Administration and Operations facility, about 160,000 square feet of employee and bus parking area, a 14,000 square feet bus wash facility, a 29,000 square feet Maintenance Facility, and a fuel site.

The site location will be determined and structures should be 1 to 2 stories in height. Structural loads and grading will be determined by others; structural loads will be representative for this type of structure and little to no fill will be needed to raise the site grade.

The site is to be accessible to normal, truck-mounted drilling equipment, and site access will be granted. Field work is to be accomplished during normal business hours (Monday through Friday, 8:00AM to 5:00PM). The site will not require clearing of trees or brush to access the boring locations. Work to be accomplished using auger drilling equipment operating at a normal rate of penetration. If auger refusal is encountered, the drilling will be terminated and County notified. Boreholes can be backfilled with the drilling spoils. Some ground disturbance should be expected as a result of the field work. No Traffic control measures, permitting or environmental clearance will need to be provided by Contractor. Contractor will not perform a 100-foot deep boring for this project to estimate the "Site Class" for buildings located in jurisdictions complying with the International Building Code (IBC).

GEOTECHNICAL SERVICES – Base Scope of Work

1. Perform geologic research (reviewing readily available published and in-house geotechnical literature of the site and the general site area including geologic maps), and a walking geologic reconnaissance of the project site.
2. Conduct a site visit to select and mark out the proposed boring locations. Contact Texas 811 prior to exploration.
3. Drill, log, and sample up to 24 exploratory borings. The borings will extend up to 20 feet below the ground surface (bgs) and be situated within the proposed building areas. Borings are to be advanced with a truck-mounted drill rig.

4. Collect geotechnical soil samples continuously through any fill or to a depth of 12 feet and at five-foot intervals thereafter. Samples will be taken using conventional split-spoon and/or thin-wall tube sampling techniques for laboratory testing and analysis.
5. Perform laboratory testing that will generally consist of moisture content, No. 200 Wash, Atterberg limits, and strength testing (i.e. unconfined compression and pocket penetrometer).
6. Prepare a geotechnical report to include logs of the exploratory borings and results of the laboratory testing. The report will include a cover letter sealed by a Professional Engineer licensed in the State of Texas. The report will include the following:
 - Description of work scope, laboratory, and field procedures;
 - Subsurface soil, rock (if encountered), and groundwater conditions;
 - Maps and boring plans;
 - Excavation characteristics of on-site soils;
 - Earthwork considerations;
 - Potential for re-use of on-site soils;
 - Subgrade preparation measures in building and non-building areas;
 - Expansive soil-related movements using an empirical method for predicting Potential Vertical Rise (PVR) developed by Texas Department of Transportation (TxDOT);
 - Suitable foundation types;
 - Allowable bearing pressures;
 - Concrete pavement thickness; and
 - Boring logs including laboratory test results.

CONSTRUCTION MATERIALS TESTING SERVICES

The scope of services to be performed during the construction phase are outlined below:

- Proof-rolling observation of the subgrade;
- Field compaction testing of the pad subgrade, structural fill, paving subgrade and utility trench backfill soils;
- Cast-in-place concrete sampling and testing for foundations, slab-on-grade, tilt-walls, sidewalks, and paving;
- Rebar Inspection;

- Laboratory testing of soil materials such as Moisture-Density Relationships (Proctor), Atterberg Limits (PI), 200 Wash, and Compressive Strength Testing of Concrete and Grout test specimens;
- Structural steel inspection; and
- Project management, data processing and report review services of laboratory and field test reports.

FEE

Geotechnical Services

Work Scope described above for a lump sum fee of \$30,000 (Thirty Thousand Dollars).

Additional borings performed outside the above base scope during initial field exploration: \$55 per foot of drilling.

Any additional services, not included in the aforementioned scope, will be charged on a time-and-materials basis in accordance with the attached Schedule of Fees valid through December 31, 2015.

Construction Materials Testing (CMT)

Upon receipt of the final set of construction plans and contractor's schedule, fee estimate to be provided and approved according to scope of work described herein and priced according to the attached Schedule of Fees valid through December 31, 2015. Total Cost not to exceed \$300,000.

SCHEDULE OF FEES

HOURLY CHARGES FOR PERSONNEL

Principal Engineer/Geologist/Environmental Scientist	\$ 155
Senior Engineer/Geologist/Environmental Scientist	\$ 125
Senior Project Engineer/Geologist/Environmental Scientist	\$ 115
Project Engineer/Geologist/Environmental Scientist	\$ 105
Senior Staff Engineer/Geologist/Environmental Scientist	\$ 95
Staff Engineer/Geologist/Environmental Scientist	\$ 85
GIS Analyst	\$ 65
Field Operations Manager	\$ 75
Supervisory Technician	\$ 65
Nondestructive Examination Technician, UT, MT, LP	\$ 90
Senior Field/Laboratory Technician	\$ 55
Field/Laboratory Technician	\$ 45
Concrete/Asphalt Batch Plant Inspector	\$ 85
Special Inspector (Concrete, Masonry, Steel, Welding, and Fireproofing)	\$ 85
Technical Illustrator/CAD Operator	\$ 45
Geotechnical/Environmental/Laboratory Assistant	\$ 36
Information Specialist	\$ 36
Data Processing, Technical Editing, or Reproduction	\$ 36

OTHER CHARGES

Rebar Locator (Pachometer)	\$ 120/day
Vehicle Usage	\$ 8/hr
Nuclear Density Gauge Usage	\$ 9/hr
Vapor Emission Kits	\$ 30/kit
Direct Project Expenses	Cost plus 15%
Laboratory testing, geophysical equipment, and other special equipment provided upon request	

NOTES (Field Services)

For field and laboratory technicians and special inspectors, regular hourly rates are charged during normal weekday construction hours. Overtime rates at 1.5 times the regular rates will be charged for work in excess of 8 hours per day and all day on Saturdays. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day or on Sundays and holidays. Lead time for any requested service is 24 hours. Field Technician rates are based on a 4-hour minimum. Field personnel are charged portal to portal.

INVOICES

Invoices will be rendered monthly unless otherwise arranged, and are payable upon receipt. A service charge of 1.5 percent per month may be charged on accounts not paid within 30 days. Attorney fees or other costs incurred in collecting delinquent accounts will be paid by the client.

TERMS AND CONDITIONS

The terms and conditions of providing our consulting services include our limitation of liability and indemnities as presented in Ninyo & Moore's Work Authorization and Agreement.

SCHEDULE OF FEES FOR LABORATORY TESTING
Laboratory Test, Test Designation, and Price Per Test

Soils		Concrete / Cement	
Atterberg Limits, D 4318	\$ 55	Compressive Strength, C 39	\$ 15
California Bearing Ratio (CBR), D 1883	\$ 185	Flexural Test, C 78 or C 293	\$ 25
One Dimensional Consolidation, D 2435	\$ 310	Splitting Tensile Strength, C 496	\$ 95
Consolidation Additional Increments, D2435	\$ 45	Time of Setting of Cement by Vicat Needle, C 191	\$ 250
Hydrometer Analysis, D 422	\$ 110	Concrete Laboratory Mix Verification, Excluding cylinders	\$ 300
Double Hydrometer Analysis, D 4221	\$ 155	Concrete Core Compressive Strength, Includes Prep, C 42	\$ 70
Moisture Content, D 2216	\$ 8	Concrete Core Measurement, C 174	\$ 10
Moisture and Density, D 2937	\$ 35	Concrete Coring Minimum Charge	\$ 300
Permeability, D 2434	\$ 200	Concrete Coring - 4" Diameter to 6-inch depth	\$ 90
Specific Gravity, D 854	\$ 50	Concrete Coring Additional Thickness 6" to 12" depth	\$ 8/inch
Standard Proctor Density, D 698	\$ 175	Concrete Coring Additional Thickness, over 12" depth	\$ 10/inch
Modified Proctor Density, D 1557	\$ 190	Compressive Strength L.T. Wt. Insulating Concrete, C 495	\$ 30
(Rock corrections add \$70)		Unit Weight of L.T. Wt. Insulating Concrete, C 495	\$ 25
Sieve Analysis, D 422	\$ 55	Fireproofing	
Sieve Analysis, -200 Wash, D 1140	\$ 45	Density of SFRM, E 605	\$ 35
Swell Test, D 4546	\$ 290	Cohesion/Adhesion of SFRM, E 736	\$ 25
Triaxial Shear, UU, one point, D 2850	\$ 55	Asphalt Concrete	
Unconfined Compression, D 2166	\$ 40	Asphalt Mix Design Review, Job Spec	\$ 190
Pinhole Dispersion Test, D 4647	\$ 245	Asphalt Mix Design, 5-points	\$ 1500
Crumb Test Dispersive Test, D 6572	\$ 40	Extraction, % Asphalt, including Gradation, TEX 210F	\$ 190
Lime Determination, PI Method	\$ 210	Hveem Stability, Tex 208F	\$ 90/set
Lime Determination, pH Method, D 6276	\$ 200	Bulk Density Lab Molded Samples, Tex 207F	\$ 50/set
Compressive Strength Cement Stabilized Sand, D 1633	\$ 65	Bulk Density Core, Tex 207F	\$ 45
Standard Proctor Density Treated Soils, D 698	\$ 195	Molding Specimens, Tex 206F	\$ 55/set
Modified Proctor Density Treated Soils, D 1557	\$ 205	Measurement of Asphalt Cores	\$ 10
Masonry		Asphalt Coring Minimum Charge	\$ 300
Brick Absorption, 24-hour submersion, C 67	\$ 65	Asphalt Coring - 4" Diameter to 6-inch depth	\$ 80
Brick Absorption, 5-hour boiling, C 67	\$ 65	Concrete Coring Additional Thickness over 6" depth	\$ 7/inch
Brick Absorption, 7-day, C 67	\$ 55	Maximum Theoretical Unit Weight, Tex 227F	\$ 80
Brick Compression Test, C 67	\$ 30	Aggregates	
Brick Moisture as received, C 67	\$ 30	Absorption, Coarse, C 127	\$ 50
Brick Measurement, C 67	\$ 50	Absorption, Fine, C 128	\$ 50
CMU Block Compression Test, 8x8x16, C 140	\$ 75	Clay Lumps and Friable Particles, C 142	\$ 50
CMU Block Unit Weight and Absorption, C 140	\$ 70	Los Angeles Abrasion, C 131 or C 535	\$ 180
CMU Block Moisture Content, C 140	\$ 70	Organic Impurities, C 40	\$ 45
CMU Block Measurement, C 140	\$ 25	Sieve Analysis, Coarse Aggregate, C 136	\$ 50
Compressive Strength, Grout prism, C 1019	\$ 40	Sieve Analysis, Fine Aggregate, C 136	\$ 50
Compressive Strength, Mortar Cube, C 109	\$ 20	Decantation, C 117	\$ 45
		Specific Gravity, Coarse, C 127	\$ 70
		Specific Gravity, Fine, C 128	\$ 85

Special preparation of standard test specimens will be charged the technician's hourly rate.

EXHIBIT B
NEW SCHEDULE OF FEES

SCHEDULE OF FEES

HOURLY CHARGES FOR PERSONNEL

Principal Engineer/Geologist/Environmental Scientist/Certified Industrial Hygienist.....	\$ 180
Senior Engineer/Geologist/Environmental Scientist.....	\$ 150
Senior Project Engineer/Geologist/Environmental Scientist	\$ 140
Project Engineer/Geologist/Environmental Scientist.....	\$ 130
Senior Staff Engineer/Geologist/Environmental Scientist	\$ 115
Staff Engineer/Geologist/Environmental Scientist.....	\$ 110
Nondestructive Testing Technician (NDT) (UT, MT, LP)	\$ 120
Concrete/Asphalt Batch Plant Inspector.....	\$ 90
Special Inspector (Concrete, Masonry, Steel, Welding and Fireproofing)	\$ 120
Field Operations/Project Manager	\$ 90
Supervisory Technician/Senior Inspector	\$ 75
GIS Analyst	\$ 85
Senior Field/Laboratory/Environmental Technician.....	\$ 65
Field/Laboratory Technician.....	\$ 60
Technical Illustrator/CAD Operator.....	\$ 55
Geotechnical/Environmental/Laboratory Assistant.....	\$ 45
Information Specialist.....	\$ 45
Data Processing, Technical Editing, or Reproduction.....	\$ 45

OTHER CHARGES

Rebar Locator (Micro Covermeter/Pachometer)	\$ 150/day
Inclinometer Usage	\$ 160/day
Concrete Coring Machine Usage (includes one technician)	\$ 140/hr
Anchor Load Test (includes one technician).....	\$ 85/hr
PID/FID Usage	\$ 135/day
Hand Auger Kits (includes 10 soil sample kits).....	\$ 85/day
Water Level Meter Usage	\$ 50/day
Floor Flatness Equipment Usage	\$ 40/hr
Vapor Emission Kits	\$ 45/kit
Conductivity/pH Meter Usage	\$ 40/day
Nuclear Density Gauge Usage	\$ 12/hr
Field Vehicle Usage	\$ 10/hr
Direct Project Expenses	Cost plus 15%
Laboratory testing, geophysical equipment, and other special equipment provided upon request.	

NOTES (Field Services)

For field and laboratory technicians and special inspectors, overtime rates at 1.5 times the regular rates will be charged for work performed in excess of 8 hours in one day Monday through Friday and all day on Saturday and Sunday. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day and all day on holidays. Lead time for any requested service is 24 hours. Field Technician rates are based on a 4-hour minimum. Special inspection rates are based on a 4-hour minimum for the first 4 hours and an 8-hour minimum for hours exceeding 4 hours. Field personnel are charged portal to portal. The given rates do not apply to projects that are subject to Davis Bacon/prevaling wage provisions.

INVOICES

Invoices will be rendered monthly unless otherwise arranged, and are payable upon receipt. A service charge of 1.5 percent per month may be charged on accounts not paid within 30 days. Attorney fees or other costs incurred in collecting delinquent accounts will be paid by the client.

TERMS AND CONDITIONS

The terms and conditions of providing our consulting services include our limitation of liability and indemnities as presented in Ninjo & Moore's Work Authorization and Agreement.

SCHEDULE OF FEES FOR LABORATORY TESTING
Laboratory Test, Test Designation, and Price Per Test

Soils

Atterberg Limits, D 4318	\$ 55
California Bearing Ratio (CBR), D 1883	\$ 185
One Dimensional Consolidation, D 2435	\$ 310
Consolidation Additional Increments, D2435	\$ 45
Hydrometer Analysis, D 422	\$ 110
Double Hydrometer Analysis, D 4221	\$ 155
Moisture Content, D 2216	\$ 8
Moisture and Density, D 2937	\$ 35
Permeability, D 2434	\$ 200
Specific Gravity, D 854	\$ 50
Standard Proctor Density, D 698	\$ 175
Modified Proctor Density, D 1557	\$ 190
(Rock corrections add \$70)	
Sieve Analysis, D 422	\$ 55
Sieve Analysis, -200 Wash, D 1140	\$ 45
Swell Test, D 4546	\$ 290
Triaxial Shear, UU, one point, D 2850	\$ 55
Unconfined Compression, D 2166	\$ 40
Pinhole Dispersion Test, D 4647	\$ 245
Crumb Test Dispersive Test, D 6572	\$ 40
Lime Determination, PI Method	\$ 210
Lime Determination, pH Method, D 6276	\$ 200
Compressive Strength Cement Stabilized Sand, D 1633	\$ 65
Standard Proctor Density Treated Soils, D 698	\$ 195
Modified Proctor Density Treated Soils, D 1557	\$ 205

Masonry

Brick Absorption, 24-hour submersion, C 67	\$ 65
Brick Absorption, 5-hour boiling, C 67	\$ 65
Brick Absorption, 7-day, C 67	\$ 55
Brick Compression Test, C 67	\$ 30
Brick Moisture as received, C 67	\$ 30
Brick Measurement, C 67	\$ 50
CMU Block Compression Test, 8x8x16, C 140	\$ 75
CMU Block Unit Weight and Absorption, C 140	\$ 70
CMU Block Moisture Content, C 140	\$ 70
CMU Block Measurement, C 140	\$ 25
Compressive Strength, Grout prism, C 1019	\$ 40
Compressive Strength, Mortar Cube, C 109	\$ 20

Concrete / Cement

Compressive Strength, C 39	\$ 15
Flexural Test, C 78 or C 293	\$ 25
Splitting Tensile Strength, C 496	\$ 95
Time of Setting of Cement by Vicat Needle, C 191	\$ 250
Concrete Laboratory Mix Verification, Excluding cylinders	\$ 300
Concrete Core Compressive Strength, Includes Prep, C 42	\$ 70
Concrete Core Measurement, C 174	\$ 10
Concrete Coring Minimum Charge	\$ 300
Concrete Coring - 4" Diameter to 6-inch depth	\$ 90
Concrete Coring Additional Thickness 6" to 12" depth	\$ 8/inch
Concrete Coring Additional Thickness, over 12" depth	\$ 10/inch
Compressive Strength Lt. Wt. Insulating Concrete, C 495	\$ 30
Unit Weight of Lt. Wt. Insulating Concrete, C 495	\$ 25

Fireproofing

Density of SFRM, E 605	\$ 35
Cohesion/Adhesion of SFRM, E 736	\$ 25

Asphalt Concrete

Asphalt Mix Design Review, Job Spec.	\$ 190
Asphalt Mix Design, 5-points	\$ 1500
Extraction, % Asphalt, including Gradation, TEX 210F	\$ 190
Hveem Stability, Tex 208F	\$ 90/set
Bulk Density Lab Molded Samples, Tex 207F	\$ 50/set
Bulk Density Core, Tex 207F	\$ 45
Molding Specimens, Tex 206F	\$ 55/set
Measurement of Asphalt Cores	\$ 10
Asphalt Coring Minimum Charge	\$ 300
Asphalt Coring - 4" Diameter to 6-inch depth	\$ 80
Concrete Coring Additional Thickness over 6" depth	\$ 7/inch
Maximum Theoretical Unit Weight, Tex 227F	\$ 80

Aggregates

Absorption, Coarse, C 127	\$ 50
Absorption, Fine, C 128	\$ 50
Clay Lumps and Friable Particles, C 142	\$ 50
Los Angeles Abrasion, C 131 or C 535	\$ 180
Organic Impurities, C 40	\$ 45
Sieve Analysis, Coarse Aggregate, C 136	\$ 50
Sieve Analysis, Fine Aggregate, C 136	\$ 50
Decantation, C 117	\$ 45
Specific Gravity, Coarse, C 127	\$ 70
Specific Gravity, Fine, C 128	\$ 85

Special preparation of standard test specimens will be charged the technician's hourly rate.

EXHIBIT B

ATTACHMENT B

From: [Jelinek, Jon](#)
To: [Jay Sunderwala](#)
Cc: [Shelton, Paulette](#); [Knight, James](#); [Staigle, Rick](#); [Lessey, Alisha](#); [Maldonado, Yvette](#); [Thomas, Jeff](#)
Subject: RE: Noise Wall Design/Construction
Date: Tuesday, December 05, 2017 8:51:55 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Jay,

Although we'll be using amended TxDOT standards to communicate the performance specified aspects of the sound wall (precast concrete elements), this is not a TxDOT project. The results of Texas Cone Penetration tests will be of no value to us as the engineer of record. We simply need Ninyo and Moore to provide supplemental geotechnical recommendations to your report dated May 5, 2016 (Project No. 700382001) that include vertical and lateral capacity curves for drilled shaft foundations along with deflection, shear and bending moment diagrams derived using the computer program LPILE. Please ensure that your analysis accounts for the applied lateral load *and moment* at the base of the wall as identified in the design criteria below. Deflection under a 'Free Head Condition' should be limited to approximately 0.5% of the wall height which is currently estimated at ten feet.

If you have any additional questions or comments, please contact me.

Regards,

Jon D. Jelinek, PE
Associate, Facilities Team Leader



2925 Briarpark Drive, Suite 400 • Houston, TX 77042-3720
T 713.266.6900 D 713.821.0250 C 281.253.2252
www.lan-inc.com • JDJelinek@lan-inc.com



From: Thomas, Jeff
Sent: Tuesday, December 05, 2017 2:38 PM
To: Jelinek, Jon <JDJelinek@lan-inc.com>
Subject: Fwd: Noise Wall Design/Construction

From: Jay Sunderwala <jsunderwala@ninyoandmoore.com>
Sent: Tuesday, December 5, 2017 1:27:48 PM
To: Shelton, Paulette; Thomas, Jeff
Cc: Knight, James; Staigle, Rick; Lessey, Alisha; Maldonado, Yvette
Subject: RE: Noise Wall Design/Construction

Paulette/Jeff,

I was wondering if you will be using a TXDOT design and will need to perform Texas Cone Penetrometer (TCP) testing.

Thanks,

Jay T. Sunderwala, PE
Managing Principal

Ninyo & Moore

Geotechnical & Environmental Sciences Consultants
2313 West Sam Houston Parkway North, Ste. 119
Houston, Texas 77043
(713) 973-8400 (x11401)
(713) 973-8450 (Fax)
jsunderwala@ninyoandmoore.com
TBPE Firm Number F-9782

Experience . Quality . Commitment

30 Years of Quality Service



From: Shelton, Paulette [<mailto:Paulette.Shelton@fortbendcountytexas.gov>]

Sent: Monday, December 04, 2017 8:26 AM

To: Thomas, Jeff; Jay Sunderwala

Cc: Knight, James; Staigle, Rick; Lessey, Alisha; Maldonado, Yvette

Subject: Re: Noise Wall Design/Construction

Jeff - Thanks - I thought I'd remembered something about this.

Jay - if you could refine scope/pricing as necessary per our contract and get that to me I'll get it amended into your contract and ultimately a notice to Proceed.

Thanks

Paulette

Sent from my iPhone

On Dec 4, 2017, at 7:54 AM, Thomas, Jeff <JRThomas@lan-inc.com> wrote:

Paulette,

Here is the scope for the additional Geotech work needed for the sound wall foundation.

Jeffrey R. Thomas, PE, CEM, CEA
Senior Associate, Facilities Team Leader

Jeffrey R. Thomas, PE, CEM, CEA
Senior Associate, Facilities Team Leader

“How easy do I make it for you to do great work?”



2925 Briarpark Drive, Suite 400 • Houston, TX 77042-3720
T 713.266.6900 **D** 713.821.0414 **C** 832.493.7543
www.lan-inc.com • JRThomas@lan-inc.com



From: Jelinek, Jon

Sent: Friday, December 1, 2017 7:38 AM

To: Thomas, Jeff <JRThomas@lan-inc.com>

Subject: RE: Noise Wall Design/Construction

Jeff,

Here is the geotechnical engineering SOW excerpt take from previous correspondence:

However, please note that we'll need some supplemental support from Ninyo & Moore (project geotechnical engineer). Presently, the building and maintenance facility superstructures are supported on drilled and under-reamed piers founded approximately ten feet below existing grade. N&M has indicated these piers can accommodate a lateral force of only 2,000 pounds. We estimate that the piers supporting the sound wall may need to accommodate 6,000 to 8,000 pounds of lateral force. We'll need N&M to analyze/design 30 to 36 inch diameter straight shaft piers for this lateral load including an applied moment of thirty to forty foot kips. We'll be happy to discuss this with N&M (Richard Whitt) directly, but wanted you to be aware of the need for their supplemental support.

Regards,

Jon D. Jelinek, PE
Associate, Facilities Team Leader



2925 Briarpark Drive, Suite 400 • Houston, TX 77042-3720
T 713.266.6900 **D** 713.821.0250 **C** 281.253.2252
www.lan-inc.com • JDJelinek@lan-inc.com



essage. Should show as an envelope under attachments.

[Report This Message as Spam to FBCIT](#)

[Report This Message as Phishing to FBCIT](#)

Attach the message to the E-Mail

Right-Click the Spam/Phish message (not the text) copy and paste into the body of the new message. Should show as an envelope under attachments.

[Report This Message as Spam to FBCIT](#)

[Report This Message as Phishing to FBCIT](#)

Attach the message to the E-Mail

Right-Click the Spam/Phish message (not the text) copy and paste into the body of the new message. Should show as an envelope under attachments.