

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

AGREEMENT FOR CONSTRUCTION MATERIAL TESTING 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 Tolunay-Wong Engineers, Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide certain construction materials testing services to the Harlem Road (Mobility Project No. 726) Paving and Drainage Improvements (Bridge Portion) Project (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

Article I. Scope of Services

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

Article II. 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.

Article III. Compensation and Payment

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is twenty-eight thousand three hundred thirty-seven dollars and 00/100 (\$28,337.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.

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 two (2) original 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 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.

Article IV. 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 twenty-eight thousand three hundred thirty-seven dollars and 00/100 (\$28,337.00), 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 twenty-eight thousand three hundred thirty-seven dollars and 00/100 (\$28,337.00).

Article V. 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 thirty (30) days 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.

Article VI. 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.

Article VII. Termination

7.1 Termination for Convenience

7.1.1 County may terminate this Agreement at any time upon ten (10) days 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.

Article VIII. 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.

Article IX. 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.

Article X. 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. 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.

Article XI. 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.

Article XII. 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.

Article XIII. 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.

Article XIV. 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 Facilities Management and Planning 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:	Tolunay-Wong Engineers, Inc. 10710 S. Sam Houston Pkwy W., Suite 100 Houston, Texas 77031

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.

Article XV. 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.

Article XVI. 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.

Article XVII. 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.

Article XVIII. 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.

Article XIX. 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.

Article XX. Third Party Beneficiaries

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

Article XXI. 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.

Article XXII. 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.

Article XXIII. Captions

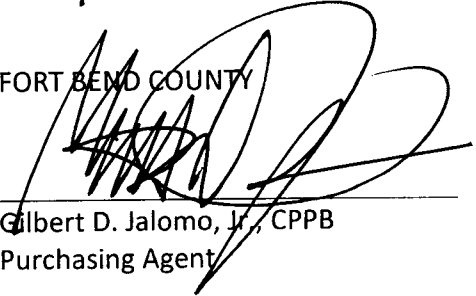
The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Article XXIV. 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 27 day of May, 2014.

FORT BEND COUNTY



Gilbert D. Jalomo, Jr., CPPB
Purchasing Agent

Tolunay-Wong Engineers, Inc.



Authorized Agent- Signature

Doug Weslow

Authorized Agent- Printed Name

Vice President

Title

5/14/14

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$28,337⁰⁰ to accomplish and pay the obligation of Fort Bend County under this contract.

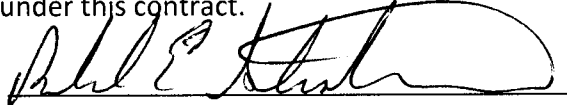

Robert Edward Sturdivant, County Auditor

EXHIBIT A

April 30, 2014
TWEI Proposal No: P14-C221

Fort Bend County Purchasing Department
Travis Annex
301 Jackson, Suite 201
Richmond, TX 77469

Email: stacy.slawinski@fortbendcountytexas.gov

Attention: Mr. J. Stacy Slawinski, P.E.

**PROPOSAL FOR CONSTRUCTION MATERIAL TESTING SERVICES
HARLEM ROAD (MOBILITY PROJECT NO. 726)
PAVING AND DRAINAGE IMPROVEMENTS (BRIDGE PORTION)
FORT BEND COUNTY, TX**

Dear Mr. Slawinski:

Tolunay-Wong Engineers, Inc. (TWE) appreciates the opportunity to submit this proposal to provide construction material testing services for the mentioned project. This proposal outlines our scope of services, unit rates and an estimated cost of services.

Scope of Services

The scope of services covered in this proposal includes, but are not limited to the following:

- Gradation testing & lime depth checks, stabilized subgrade
- Compressive strength tests, cement stabilized sand
- Field density/moisture testing on backfill embankment, fill and stabilized subgrade to verify compaction and moisture content compliance
- Foundation monitoring installation observation on precast driven piles
- Concrete monitoring and testing on structural, slope paving, channel lining & miscellaneous concrete. Services include slump, temperature, air content and compressive strength
- Asphalt monitoring & testing, black base & surface course paving
- Related laboratory testing, report preparation and sample pick-up services

Estimated Cost of Services

We estimate the cost of services to be approximately **\$28,337**. See attached "Estimated cost of Services" sheets for are individual breakdown and unit costs.

TWEL Proposal No.: P14-C221
April 30, 2014
Page 2

Our estimate is based on quantities provide to us and projects of similar size and scope. Our estimate is based on time and materials. Actual billings depend largely on the contractors work progress.

Proposal Acceptance

If this proposal meets with your approval, please sign the attached "Agreement for Testing Services" or send us your standard contract agreement. We can begin work with your verbal authorization.

Closing Remarks

Again, we would like to express our appreciation for the opportunity to submit this proposal and look forward to serving you on this project.

Sincerely,

TOLUNAY-WONG ENGINEERS, INC.
TBPE Firm No. F-124



Doug Weslow
Vice President

Enclosures: Estimated Cost of Services
 Agreement for Testing Services

DW/ab:

Tolunay-Wong Engineers, Inc.

ESTIMATED COST OF SERVICES

HARLEM ROAD (MOBILITY PROJECT NO. 726) BRIDGE FORT BEND COUNTY, TX

Date: April 30, 2014
Proposal No: P14-C221

<u>Description of Hourly Services</u>	<u>Quantity</u>	<u>Unit Fee</u>	<u>Unit</u>	<u>Total</u>
Material Sampling	9	\$ 45.00	hour	\$ 405.00
Earth Work Monitoring and Testing	72	\$ 45.00	hour	\$ 3,240.00
Foundation Monitoring	36	\$ 45.00	hour	\$ 1,620.00
Concrete Monitoring and Testing	68	\$ 45.00	hour	\$ 3,060.00
Concrete Cylinder Pick-up	24	\$ 45.00	hour	\$ 1,080.00
subtotal				\$ 9,405.00

Description of Laboratory Unit Test Services

Soils, Concrete

Moisture/Density Relationship, (ASTM D-698)	3	\$ 145.00	each	\$ 435.00
Atterberg Limits (ASTM D-4318)	3	\$ 45.00	each	\$ 135.00
Material Finer than 200 Sieve (ASTM D-1140)	3	\$ 40.00	each	\$ 120.00
Compressive Strength, Concrete Test Cyls (ASTM C-39)	48	\$ 17.00	each	\$ 816.00
CSS Cylinders	16	\$ 40.00	each	\$ 640.00
subtotal				\$ 2,146.00

Equipment Charges

Vehicle Charges	25	\$ 58.00	day	\$ 1,450.00
subtotal				\$ 1,450.00

Total Estimate \$ 13,001.00

note: -This is an estimate, and actual billings may vary with construction progress.

Tolunay-Wong Engineers, Inc.

ESTIMATED COST OF SERVICES

HARLEM ROAD (MOBILITY PROJECT NO. 726) PAVING, DRAINAGE & MISC. FORT BEND COUNTY, TX

Date: April 30, 2014
Proposal No: P14-C221

<u>Description of Hourly Services</u>	<u>Quantity</u>	<u>Unit Fee</u>	<u>Unit</u>	<u>Total</u>
Material Sampling	9	\$ 45.00	hour	\$ 405.00
Earth Work Monitoring and Testing	80	\$ 45.00	hour	\$ 3,600.00
Concrete Monitoring and Testing	20	\$ 45.00	hour	\$ 900.00
Asphalt Monitoring & Testing	120	\$ 45.00	hour	\$ 5,400.00
Concrete Cylinder Pick-up	6	\$ 45.00	hour	\$ 270.00
subtotal				\$ 10,575.00

Description of Laboratory Unit Test Services

Soils, Concrete

Moisture/Density Relationship. (ASTM D-698)	3	\$ 145.00	each	\$ 435.00
Atterberg Limits (ASTM D-4318)	10	\$ 45.00	each	\$ 450.00
Material Finer than 200 Sieve (ASTM D-1140)	3	\$ 40.00	each	\$ 120.00
Compressive Strength, Concrete Test Cyls (ASTM C-39)	8	\$ 17.00	each	\$ 136.00
Asphalt Laboratory Test Services	4	\$ 325.00	each	\$ 1,300.00
subtotal				\$ 2,441.00

Equipment Charges

Vehicle Charges	40	\$ 58.00	day	\$ 2,320.00
subtotal				\$ 2,320.00

Total Estimate \$ 15,336.00

note: -This is an estimate, and actual billings may vary with construction progress.