STANDARD PROFESSIONAL SERVICES AGREEMENT
AGREEMENT BETWEEN
MATERIAL TESTING CONSULTANTS, INC.
AND THE ANN ARBOR DDA
FOR PROFESSIONAL SERVICES

The Ann Arbor DDA, a Michigan municipal corporation, having its offices at 150 S. Fifth Ave., Ann Arbor, Michigan 48104 ("DDA"), and Material Testing Consultants ("Consultant") a Michigan Corporation with its address at 693 Plymouth NE, Grand Rapids, MI 49505 agree as follows on this 25th day of March 2019.

The Consultant agrees to provide professional services to the DDA under the following terms and conditions:

I. DEFINITIONS
Administering Service Area/Unit means Ann Arbor DDA

Contract Administrator means Susan Pollay, acting personally or through any appropriate staff member.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for or delivered to DDA by Consultant under this Agreement


II. DURATION

This Agreement shall become effective on April 1, 2019, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement.

III. SERVICES

A. The Consultant agrees to provide professional engineering services ("Services") in connection with the Project as described in Exhibit A. The DDA retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.
B. Quality of Services under this Agreement shall be of the level of professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.

C. The Consultant shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

D. The Consultant may rely upon the accuracy of reports and surveys provided to it by the DDA except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONSULTANT

A. The Consultant shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Consultant, and approved by the Contract Administrator. Total compensation payable for all Services performed during the term of this Agreement shall not exceed $150,000.

B. The Consultant will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be on the basis of reasonable time spent and reasonable quantities of materials used, according to the schedule of rates in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered “reasonable” under this provision.

C. The Consultant shall keep complete records of time spent and materials used on the Project so that the DDA may verify invoices submitted by the Consultant. Such records shall be made available to the DDA upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

A. The Consultant shall procure and maintain during the life of this contract, such insurance policies, including those set forth below, as will protect itself and the City of Ann Arbor and Ann Arbor DDA, and their officers, employees, and agents from all claims for bodily injuries, death or property damage which may arise under this contract, whether the acts were made by the Consultant or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
1. Professional Liability Insurance protecting the Consultant and its employees in an amount not less than $1,000,000.

2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:
   - Bodily Injury by Accident - $500,000 each accident
   - Bodily Injury by Disease - $500,000 each employee
   - Bodily Injury by Disease - $500,000 policy limit

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98. The Ann Arbor DDA shall be added as additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground Coverage or Pollution. Further, the following minimum limits of liability are required:
   - $1,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
   - $2,000,000 Per Job General Aggregate
   - $1,000,000 Personal and Advertising Injury

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be $1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of $1,000,000.

B. Insurance required under V.A.3 and V.A.4 of this contract shall be considered primary as respects any other valid or collectible insurance that the DDA may possess, including any self-insured retentions the DDA may have; and any other insurance the DDA does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the DDA.
C. In the case of all contracts involving on-site work, the Consultant shall provide to the DDA, before the commencement of any work under this contract, documentation demonstrating it has obtained the above mentioned policies. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the Ann Arbor DDA. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the DDA, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Consultant supplies a copy of the endorsements required on the policies. Upon request, the Consultant shall provide within 30 days a copy of the policy(ies) to the DDA. If any of the above coverages expire by their terms during the term of this contract, the Consultant shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.

D. Any insurance provider of Consultant shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company’s Key Rating Guide of “A-“ Overall and a minimum Financial Size Category of “V”. Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the DDA.

E. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, the Consultant shall indemnify, defend and hold the City of Ann Arbor and Ann Arbor DDA, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Consultant or its employees and agents occurring in the performance of this Agreement.

VI. COMPLIANCE REQUIREMENTS

A. Nondiscrimination. The Consultant agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code.

B. Living Wage. The Consultant agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code.
VII. WARRANTIES BY THE CONSULTANT

A. The Consultant warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.

B. The Consultant warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.

C. The Consultant warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.

D. The Consultant warrants that it is not, and shall not become overdue or in default to the DDA for any contract, debt, or any other obligation to the DDA including real and personal property taxes.

VIII. TERMINATION OF AGREEMENT

A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.

B. The DDA may terminate this Agreement if it decides not to proceed with the Project by notice pursuant to Article XII. If the Project is terminated for reasons other than the breach of the Agreement by the Consultant, the Consultant shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.

C. Consultant acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the DDA to effect continued payment under this Agreement are not appropriated or otherwise made available, the DDA shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Consultant. The Contract Administrator shall give the Consultant written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.
IX. OBLIGATIONS OF THE DDA

A. The DDA shall notify the Consultant of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

A. The Consultant shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the DDA. Notwithstanding any consent by the DDA to any assignment, Consultant shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the DDA.

B. The Consultant shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. NOTICE

All notices and submissions required under this Agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this Agreement when personally delivered to the Contract Administrator or placed in the U.S. mail, postage prepaid to the Administering Service Area/Unit, care of the Contract Administrator.

XII. CHOICE OF LAW

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.
XIII. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., deliverables) prepared by
or obtained by the Consultant as provided under the terms of this Agreement shall be delivered to
and become the property of the DDA. Original basic survey notes, sketches, charts, drawings,
partially completed drawings, computations, quantities and other data shall remain in the
possession of the Consultant as instruments of service unless specifically incorporated in a
deliverable, but shall be made available, upon request, to the DDA without restriction or
limitation on their use. The DDA acknowledges that the documents are prepared only for the
Project. Prior to completion of the contracted Services the DDA shall have a recognized
proprietary interest in the work product of the Consultant.

Unless otherwise stated in this Agreement, any intellectual property owned by Consultant prior
to the effective date of this Agreement (i.e., preexisting information) shall remain the exclusive
property of Consultant even if such Preexisting Information is embedded or otherwise
incorporated in materials or products first produced as a result of this Agreement or used to
develop Deliverables. The DDA’s right under this provision shall not apply to any Preexisting
Information or any component thereof regardless of form or media.

XIV. CONFLICT OF INTEREST

Consultant certifies it has no financial interest in the Services to be provided under this
Agreement other than the compensation specified herein. Consultant further certifies that it
presently has no personal or financial interest, and shall not acquire any such interest, direct or
indirect, which would conflict in any manner with its performance of the Services under this
Agreement.

XV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be
effective and valid under applicable law. However, if any provision of this Agreement or the
application of any provision to any party or circumstance will be prohibited by or invalid under
applicable law, that provision will be ineffective to the extent of the prohibition or invalidity
without invalidating the remainder of the provisions of this Agreement or the application of the
provision to other parties and circumstances.

XVI. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation,
constitutes the entire understanding between the DDA and the Consultant with respect to the
subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference
herein, all prior representations, negotiations, agreements or understandings whether written or
oral. Neither party has relied on any prior representations, of any kind or nature, in entering into
this Agreement. This Agreement may be altered, amended or modified only by written
amendment signed by the Consultant and the DDA.
FOR CONSULTANT

P.E.
Mar 25 2019

By ____________________________

FOR THE ANN ARBOR DDA

By ____________________________
Marie Klopf, DDA Board Chair

By ____________________________
Susan Pollay, Executive Director
EXHIBIT A
SCOPE OF SERVICES

The Consultant shall perform field inspections, field and laboratory testing of construction materials, and engineering services to support, control, document, and assure the high quality construction of concrete curbs, sidewalks, and drives; the backfilling and compaction of underground utilities; placement and compaction of sand subbase and aggregate base courses; the placement of bituminous concrete pavements; and other related activities as necessary.

The testing to be performed by the Consultant shall include, but is not limited to, in-place density testing of aggregates and bituminous concrete pavements; slump, air content, and compressive strength testing of Portland cement concrete; geotechnical and/or environmental engineering as required; sampling and testing at asphalt production plants; laboratory testing of sampled materials; and the preparation and submittal in a timely manner of all test results and reports. Failing test results shall be reported to the Engineer within 24 hours of the completion of the test.

All sampling, testing, and other services shall be performed in compliance with all applicable standards including ASTM, ACI, MDOT, and the City of Ann Arbor, as well as any and all specifications of the subject project. All testing and inspection shall be performed by certified personnel, under the direct supervision of a professional engineer registered in the State of Michigan and directly employed by the Consultant.

Assignment of testing personnel (temporary or permanent) to this project is subject to approval by the DDA. Once approved, assigned personnel shall remain on the project until their services are no longer needed. Replacement of assigned personnel (temporary or permanent) with those who are not familiar with the project or with DDA or contractor personnel is not permitted, and may be considered cause to terminate the testing agreement.

Field time verification forms will be required to be signed daily by a DDA representative assigned to the project.

The DDA does not guarantee either a minimum volume of work or a specific volume of work.

Sampling and Testing Procedures
All sampling and testing procedures on this project will be performed in accordance with project specifications and ACI, ASTM, MDOT, and City of Ann Arbor standards. Concrete, soil and asphalt testing will be performed on-site by certified technicians to provide the City with fast and accurate results. Soil samples will be obtained at the pits in accordance with specifications and standards to minimize potential in sampling error that can occur from on-site sampling. Asphalt sampling shall be performed at the batch plant and tested either at the plant or at the Consultant’s laboratory by certified personnel. Results of the extraction tests will be obtained within two days and communicated with the DDA and contractors as soon as results are available.
EXHIBIT B
COMPENSATION

Consultant shall be paid for those Services performed pursuant to the Agreement inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Compensation Schedule attached states the nature and anticipated amount of compensation the Consultant shall charge the DDA. The total not-to-exceed amount shown in Section IV.A. of this contract includes these anticipated amounts and contingencies to cover unforeseen expenses.