

**STANDARD PROFESSIONAL SERVICES AGREEMENT
AGREEMENT BETWEEN
TESTING ENGINEERS & 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 Testing Engineers & Consultants ("Consultant") a Michigan Corporation with its address at 3985 Varsity Drive, Ann Arbor, Michigan 48108 agree as follows on this 10th day of March 2020.

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

Project means: First & Ashley Improvements - Material Testing Services.

II. DURATION

This Agreement shall become effective on March 10, 2020, 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

By



FOR THE ANN ARBOR DDA

By



Keith Orr, 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 and as described in attached TEC Proposal 010-20-089.

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.



Testing Engineers & Consultants, Inc.

3985 Varsity Drive • Ann Arbor, Michigan 48108
(734) 971-0030 or (313) T-E-S-T-I-N-G
Fax (734) 971-3721

Engineering Client Success

TEC Proposal Number: 010-20-089
Date Issued: March 4, 2020

Ms. Elizabeth Rolla, P.E., Project Manager
Ann Arbor Downtown Development Authority
150 S. 5th Avenue
Ann Arbor, Michigan 48104

Office No.: 734.994.6697 Phone No.: 734.567.8003
Email: erolla@a2dda.org

**Re: Construction Testing and Observation Services
First & Ashley Improvements
Ann Arbor, Michigan**

Dear Ms. Rolla:

Testing Engineers & Consultants, Inc. (TEC) is pleased to submit our proposal to provide construction materials testing services for the First & Ashley Improvements in Ann Arbor, Michigan. It is our understanding that the proposed project will consist of a two-year DDA project consists of roadway, streetscape, and utility replacements on First Street from Kingsley to William, Kingsley Street from Main to First Street and on Ashley Street between Huron and Liberty. Work also includes installation of protected bike lane on First Street and restoration of two-way traffic on both First and Ashley. Approximately 2000 ft of water main, storm sewer work, full removal and replacement of the asphalt pavement, reconstruction of some intersections, signal/street light foundations and installation of new sidewalks and curb/gutter. Construction is tentatively scheduled for April to November 2020 and April to November 2021.

It is anticipated that the construction materials testing and observation services will include but not necessarily be limited to the following:

- **Site Earthwork/Site Utility Backfill** – TEC will provide engineering technician or geotechnical professional/engineer to:
 - a. Monitor proof-rolling operations and make recommendations for undercutting and/or stabilization, if required.
 - b. Monitor the placement of engineered fill and backfill at the site using a nuclear density gauge to ensure that the soils are properly compacted.
 - c. Monitor, inspect and test the placement of stone or other approved sub-base material for concrete slabs and asphalt pavement.

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All services undertaken are subject to the following policy. Reports are submitted for exclusive use of the clients to whom they are addressed. Their significance is subject to the adequacy and representative character of the samples and the comprehensiveness of the tests, examinations and surveys made. No quotation from reports or use of TEC's name is permitted except as expressly authorized by TEC in writing.

CONSULTING ENGINEERS & FULL-SERVICE PROFESSIONAL TESTING AND INSPECTION
OFFICES IN ANN ARBOR, DETROIT, AND TROY
FOUNDED IN 1966



Testing Engineers & Consultants, Inc.

Client: Ann Arbor Downtown Development Authority

Date: March 4, 2020

TEC Proposal Number: 010-20-089

- d. Monitor utility trench backfill operations to verify use of proper materials, methods and compaction.
- **Foundation Inspection**– TEC will provide engineering technician/inspector to:
 - a. Inspect and test shallow foundations to verify that the bearing soils meet or exceed the project specifications.
 - b. Document that the size and the depth of the footings meets the plans and specifications.
 - c. Inspect the installation of the reinforcing steel to ensure that the proper quantity, size and overlaps of reinforcing steel is being used.
 - d. Monitor and record any over digging, undercutting, and other remedies for unsuitable bearing conditions.
- **Concrete Inspection, Sampling and Testing** – TEC will provide engineering technician/inspector to:
 - a. Verify, review and confirm the concrete mix designs for foundations, interior flatwork and exterior flatwork are per the project plans and specifications.
 - b. Inspect reinforcing steel for compliance with the plans and specifications in the footings, slabs, walls, and beams prior to concrete placement.
 - c. Monitor the placement of all concrete and perform testing of the fresh concrete including measurement of its slump, air content, temperature and casting of test cylinders per project specifications.
 - d. Notify client or designated individual of any concrete delivered to project site that does not meet the project specifications.
 - e. Transport the cylinders to laboratory and perform laboratory compressive strength tests on cured concrete cylinders at specified ages.
- **Bituminous Paving** – TEC will provide a Senior Engineering Technician to perform observation and testing of aggregate base materials and asphalt leveling and wearing courses.
 - a. Observe laydown of asphalt paving, check temperatures and proper compaction of asphalt material.
 - b. Perform testing of concrete curbs/gutters and drives for proper air content, slump, unit weight and cast cylinders for compressive strength testing.

Testing Engineers & Consultants, Inc.

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TEC Schedule of Fees**Personnel:**

- Technician, Daily MobilizationEach \$ 35.00
- Technician w/Nuclear Densometer, STHour \$ 45.00
- Technician w/Nuclear Densometer, STHour \$ 55.00
- Professional EngineerHour \$ 90.00

Laboratory Tests:

- Concrete Cylinder TestsEach \$ 13.00
- Concrete Beam.....Each \$ 20.00
- Sieve AnalysisEach \$ 70.00
- PG Binder Verification TestEach \$125.00
- Modified Proctor TestEach \$140.00
- Review Concrete or Asphalt Mix DesignEach \$160.00
- HMA Volumetric Test.....Each \$300.00

Breakdown of Estimated Fees

Description of Testing Activity	Qty.	Units	Unit Cost	Total
Civil Earthwork, Concrete and Asphalt Pavement Testing: Subgrade Proofroll Observation, Density Testing of Utility Backfill and Aggregate Base. Concrete Testing and Asphalt Testing				
Technician w/Nuclear Densometer, ST	800	Hours	\$45.00	\$36,000.00
Technician w/Nuclear Densometer, ST	140	Hours	\$55.00	\$7,700.00
Technician, Daily Mobilization	100	Each	\$35.00	\$3,500.00
Professional Engineer	18	Hours	\$90.00	\$1,620.00
Concrete Cylinder	100	Each	\$13.00	\$1,300.00
Concrete Beam	0	Each	\$20.00	\$0.00
Sieve Analysis	4	Each	\$70.00	\$280.00
Modified Proctor Test	4	Each	\$140.00	\$560.00
HMA Volumetric Test	4	Each	\$300.00	\$1,200.00
PG Binder Verification Test	8	Each	\$125.00	\$1,000.00
Review Concrete or Asphalt Mix Design	0	Each	\$160.00	\$0.00
2020Total				\$53,160.00
2021Total				\$54,750.00
Total				\$107,910.00

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3 of 4

Testing Engineers & Consultants, Inc.

Client: Ann Arbor Downtown Development Authority

Date: March 4, 2020

TEC Proposal Number: 010-20-089

Terms and Conditions:

1. The quoted fees represent standard rates for eight hours of continuous work including travel time between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday. Overtime rates would be applicable for Saturday and hours other than those stated above at 1.5 times the standard rate. Premium rates will be applicable for hours worked on Sundays and Holidays at 2.0 times the standard rate.
2. A four-hour minimum, inclusive of travel time and equipment charges, will apply to field services. The four-hour minimum will not apply to material sampling, cylinder collection, or engineering services.
3. Unless otherwise stated, local and on-site travel will be invoiced at the applicable personnel rate and \$0.60 per mile, portal-to-portal from TEC facilities. Lodging, subsistence and transportation for out-of-town services are invoiced at cost plus 20%.
4. The invoice will be based upon the actual work performed and at the quoted rates. Unless otherwise stated, invoices are due 30 days from the invoice date. An administrative fee of 1.5% per month will be added to all delinquent accounts. It is agreed that the client is liable for all costs and expenses of collection, including reasonable attorney's fees, whether or not legal proceedings are instituted. Disputes of invoiced amounts must be submitted in writing within 30 days of invoice date.
5. The TEC fee for depositions, court appearances, expert witness, legal assistance, litigation, preparation, or other legal work is \$150.00 per hour plus expenses.
6. Except for circumstances caused by the willful misconduct of TEC, all claims for damages asserted against TEC by a client or third party, including claims against TEC's directors, officers, shareholders, employees and agents, are limited to the lesser amount of \$25,000 or the total dollar value of this contract.
7. All reports, plans, specifications, computer files, field data, notes and other documents prepared by TEC, as instruments of service shall remain the property of TEC. TEC shall retain all common law, statutory and other reserved rights, including the copyright thereto. The client shall not reuse or make any modifications to reports, plans, specifications, computer files or other documents without the prior written authorization of TEC.
8. In an effort to resolve any conflicts that arise during this project or following the completion of this project, the client and TEC agree that all disputes between them arising out of or relating to this project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

TEC appreciates the opportunity to propose our services on this important project in the City of Ann Arbor. Please contact us if you have questions or need additional information.

Issued by TEC:



Edward M. Galczynski
Senior Project Manager

EMG/jb