

Municipality	 Illinois Department of Transportation Preliminary/Construction Engineering Services Agreement For Non-Motor Fuel Tax Funds	C O N S U L T A N T	Name
Township			Ciorba Group, Inc.
County			Address
Lake County Div. of Transportation			5507 N. Cumberland
Section			City
00-00093-18-WR			Chicago
			State
			Illinois

THIS AGREEMENT is made and entered into this _____ day of _____, 2011 between the above Local Agency (LA) and Consultant (ENGINEER) and covers certain professional engineering services in connection with the improvement of the above SECTION. Non-Motor Fuel Tax Funds, allotted to the LA by the State of Illinois under the general supervision of the State Department of Transportation, hereinafter called the "DEPARTMENT", will be used entirely ~~or in part~~ to finance ENGINEERING services as described under AGREEMENT PROVISIONS.

Section Description

Name Delany Road Route _____ Length _____ KM(1.1 Miles)(Structure No. _____)
Termini York House Road to Wadsworth Road

Description

Earth excavation, pavement removal, new storm sewer system, concrete curb and gutter, sidewalk, full depth bituminous pavement, traffic signals, pavement markings, detention basin, and site restorationrestoration.

Agreement Provisions

The Engineer Agrees,

1. To perform or be responsible for the performance of the following engineering services for the LA in connection with the proposed improvement herein before described, and checked below:
 - a. Make such detailed surveys as are necessary for the preparation of detailed roadway plans.
 - b. Make stream and flood plain hydraulic surveys and gather high water data and flood histories for the preparation of detailed bridge plans.
 - c. Make or cause to be made such soil surveys or subsurface investigations including borings and soil profiles and analyses thereof as may be required to furnish sufficient data for the design of the proposed improvement. Such investigations are to be made in accordance with the current requirements of the DEPARTMENT.
 - d. Make or cause to be made such traffic studies and counts and special intersection studies as may be required to furnish sufficient data for the design of the proposed improvement.
 - e. Prepare Army Corps of Engineers Permit, Division of Water Resources Permit, Bridge waterway sketch and/or Channel Change sketch, Utility plan and locations and Railroad Crossing work agreements.
 - f. Prepare Preliminary Bridge Design and Hydraulic Report, (including economic analysis of bridge or culvert types) and high water effects on roadway overflows and bridge approaches.

Draft

- g. Make complete general and detailed plans, special provisions, proposals and estimates of cost and furnish the LA with five (5) copies of the plans, special provisions, proposals and estimates. Additional copies of any or all documents, if required shall be furnished to the LA by the ENGINEER at his actual cost for reproduction.
- h. Furnish the LA with survey and drafts in quadruplicate of all necessary right-of-way dedications, construction easements and borrow pit and channel change agreements including prints of the corresponding plats and staking as required.
- i. Assist the LA in the receipt and evaluation of proposals and the awarding of the construction contract.
- j. Furnish or cause to be furnished:
- (1) Proportioning and testing of concrete mixtures in accordance with the "Manual of Instructions for Concrete Proportioning and Testing" issued by the Bureau of Materials and Physical Research, of the DEPARTMENT and promptly submit reports on forms prepared by said Bureau.
 - (2) Proportioning and testing of bituminous mixtures (including extracting test) in accordance with the "Manual of Instructions for Bituminous Proportioning and Testing" issued by the Bureau of Materials and Physical Research, of the DEPARTMENT, and promptly submit reports on forms prepared by said Bureau.
 - (3) All compaction tests as required by the specifications and report promptly the same on forms prepared by the Bureau of Materials and Physical Research.
 - (4) Quality and sieve analyses on local aggregates to see that they comply with the specifications contained in the contract.
 - (5) Inspection of all materials when inspection is not provided at the sources by the Bureau of Materials and Physical Research, of the DEPARTMENT and submit inspection reports to the LA and the DEPARTMENT in accordance with the policies of the said DEPARTMENT.
- k. Furnish or cause to be furnished
- (1) A resident engineer, inspectors and other technical personnel to perform the following work: (The number of such inspectors and other technical personnel required shall be subject to the approval of the LA.)
 - a. Continuous observation of the work and the contractor's operations for compliance with the plans and specifications as construction proceeds, but the ENGINEER does not guarantee the performance of the contract by the contractor.
 - b. Establishment and setting of lines and grades.
 - c. Maintain a daily record of the contractor's activities throughout construction including sufficient information to permit verification of the nature and cost of changes in plans and authorized extra work.
 - d. Supervision of inspectors, proportioning engineers and other technical personnel and the taking and submitting of material samples.
 - e. Revision of contract drawings to reflect as built conditions.
 - f. Preparation and submission to the LA in the required form and number of copies, all partial and final payment estimates, change orders, records and reports required by the LA and the DEPARTMENT.
 - (2) **At least one DECI-certified employee available for erosion control inspection duties.**
2. That all **construction documentation** to be furnished by the ENGINEER pursuant to this agreement will be in accordance with the current standard specifications and policies of the DEPARTMENT & the LA, it being understood that all such reports, plats, plans and drafts shall before being finally accepted, be subject to approval by the LA and the said DEPARTMENT.
 3. To attend conferences at any reasonable time when requested to do so by the LA or representatives of the DEPARTMENT.
 4. ~~In the event plans, surveys or construction staking are found to be in error during the construction of the SECTION and revisions of the plans or survey or construction staking corrections are necessary, the ENGINEER agrees that he will perform such work without expense to the LA, even though final payment has been received by him. He shall give immediate attention to these changes so there will be a minimum delay to the contractor.~~
 5. The basic survey notes and sketches, charts, computations and other data prepared or obtained by the ENGINEER pursuant to this agreement will be made available upon request to the LA or the DEPARTMENT without cost and without restriction or limitations as to their use.
 6. ~~To make such changes in working plans, including all necessary preliminary surveys and investigations, as may be required after the award of the construction contract and during the construction of the improvement.~~

7. That all plans and other documents furnished by the ENGINEER pursuant to the AGREEMENT will be endorsed by him and will show his professional seal where such is required by law.
8. To submit, upon request by the LA or the DEPARTMENT a list of the personnel and the equipment he/she proposes to use in fulfilling the requirements of this AGREEMENT.

The LA Agrees,

1. To pay the Engineer as compensation for all services performed as stipulated in paragraphs 1a, 1g, 1i, 2, 3, 5 and 6 in accordance with one of the following methods indicated by a check mark:

- a. A sum of money equal _____ percent of the awarded contract cost of the proposed improvement as approved by the DEPARTMENT.
- b. A sum of money equal to the percentage of the awarded contract cost for the proposed improvement as approved by the DEPARTMENT based on the following schedule:

Schedule for Percentages Based on Awarded Contract Cost

Awarded Cost	Percentage Fees	(see note)
Under \$50,000	_____	
	_____	%
	_____	%
	_____	%
	_____	%
	_____	%

Note: Not necessarily a percentage. Could use per diem, cost plus or lump sum.

2. To pay for services stipulated in paragraphs 1b, 1c, 1d, 1e, 1f, 1h, 1j and 1k of THE ENGINEER AGREES at the hourly rates stipulated below for personnel assigned to this SECTION as payment in full to the ENGINEER for the actual time spent in providing these services the hourly rates to include profit, overhead, readiness to serve, insurance, social security and retirement deductions. Traveling and other out-of-pocket expenses will be reimbursed to the ENGINEER at his actual cost. Subject to the approval of the LA, the ENGINEER may sublet all or part of the services provided under paragraphs 1b, 1c, 1d, 1e, 1f, 1j and 1k of THE ENGINEER AGREES. If the ENGINEER sublets all or a part of this work, the LA will pay the cost to the ENGINEER plus a five (5) percent service charge. "Cost to ENGINEER" to be verified by furnishing the LA and the DEPARTMENT copies of invoices from the party doing the work. The classifications of the employees used in the work should be consistent with the employee classifications for the services performed. If the personnel of the firm including the Principal Engineer perform routine services that should normally be performed by lesser-salaried personnel, the wage rate billed for such services shall be commensurate with the work performed.

Grade Classification of Employee	Hourly Rate*
<u>Project Manager</u>	<u>61.81</u>
<u>Construction Coordinator</u>	<u>54.02</u>
<u>Resident Engineer</u>	<u>42.38</u>
<u>Assistant Resident Engineer</u>	<u>36.00</u>
<u>Construction Engineer</u>	<u>29.67</u>
<u>Party Chief</u>	<u>31.79</u>
<u>Survey Crew Member</u>	<u>29.60</u>
<u>Project Engineer</u>	<u>50.95</u>
<u>Engineer Intern</u>	<u>16.00</u>

*Adjusted for November 1, 2013 completion date.

The hourly rates itemized above shall be effective the date the parties, hereunto entering this AGREEMENT, have affixed their hands and seals and shall remain in effect until November 1, 2013. In event the services of the ENGINEER extend beyond November 1, 2013, the hourly rates will be adjusted yearly by addendum to this AGREEMENT to compensate for increases or decreases in the salary structure of the ENGINEER that are in effect at that time.

The Total Not-to-Exceed Contract Amount shall be \$814,113.96 as shown on the attached Exhibit A – Construction Engineering (Cost Estimate of Consultant Services).

3. That payments due the ENGINEER for services rendered pursuant to this AGREEMENT will be made as soon as practicable after the services have been performed, ~~in accordance with the following schedule:~~
 - a. ~~Upon completion of detailed plans, special provisions, proposals and estimate of cost being the work required by paragraphs 1a through 1g under THE ENGINEER AGREES to the satisfaction of the LA and their approval by the DEPARTMENT, 90 percent of the total fee based on the above fee schedule and the approved estimate of cost.~~
 - b. ~~Upon award of the contract for the improvement by the LA and its approval by the DEPARTMENT, 100 percent of the total fee (excluding any fees paragraphs 1j and 1k of the ENGINEER AGREES), based on the above fee schedule and the awarded contract cost, less any previous payment.~~
 - c. ~~Upon completion of the construction of the improvement, 90 percent of the fee due for services stipulated in paragraphs 1j and 1k.~~
 - d. ~~Upon completion of all final reports required by the LA and the DEPARTMENT and acceptance of the improvement by the DEPARTMENT, 100 percent of the total fees due under this AGREEMENT, less any amounts previously paid.~~

~~By mutual agreement, partial payments, not to exceed 90 percent of the amount earned, may be made from time to time as the work progresses.~~

4. That should the improvements be abandoned at any time after the ENGINEER has performed any part of the services provided for in paragraph 1k, and prior to the completion of such services the LA shall reimburse the ENGINEER for his actual costs plus 175.87 percent incurred up to the time he is notified in writing of such abandonment "actual cost" being defined as material costs plus actual payrolls, insurance, social security, and retirement deductions **and profit**. Traveling and other out-of-pocket expenses will be reimbursed to the ENGINEER at his actual cost.
5. That should the LA require changes in any of the detailed plans, specifications or estimates ~~(except for those required pursuant to paragraph 4 of THE ENGINEER AGREES) after they have been approved by the DEPARTMENT~~, the LA will pay the ENGINEER for such changes on the basis of actual cost plus 175.87 percent to cover profit, overhead and readiness to serve - "actual cost" being defined as in paragraph 4 above. ~~It is understood that "changes" as used in this paragraph shall in no way relieve the ENGINEER of his responsibility to prepare a complete and adequate set of plans.~~
6. That should the LA extend completion of the improvement beyond the time limit given in the contract, the LA will pay the ENGINEER, in addition to the fees provided herein, his actual cost incurred beyond such time limit - "actual cost" being defined as in paragraph 4 above.

It is Mutually Agreed,

1. That any difference between the ENGINEER and the LA concerning the interpretation of the provisions of this AGREEMENT shall be referred to a committee of disinterested parties consisting of one member appointed by the ENGINEER one member appointed by the LA and a third member appointed by the two other members for disposition and that the committee's decision shall be final.
2. This AGREEMENT may be terminated by the LA upon giving notice in writing to the ENGINEER at his last known post office address. Upon such termination, the ENGINEER shall cause to be delivered to the LA all drawings, specifications, ~~partial and completed estimates and data if any from traffic studies and soil survey and subsurface investigations with~~ **construction documentation with** the understanding that all such material becomes the property of the LA. The ENGINEER shall be paid for any services completed and any services partially completed in accordance with Section 4 of THE LA AGREES.
3. ~~That if the contract for construction has not been awarded one year after the acceptance of the plans by the LA and their approval by the DEPARTMENT, the LA will pay the ENGINEER the balance of the engineering fee due to make 100 percent of the total fees due under the AGREEMENT, based on the estimate of cost as prepared by the ENGINEER and approved by the LA and the DEPARTMENT.~~
4. That the ENGINEER warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER, to solicit or secure this contract and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty the LA shall have the right to annul this contract without liability.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed in quadruplicate counterparts, each of which shall be considered as an original by their duly authorized offices.

Executed by the LA:

County of Lake of the
(Municipality/Township/County)

ATTEST:

State of Illinois, acting by and through its

By _____

County Board

Lake County Clerk

By _____

(Seal)

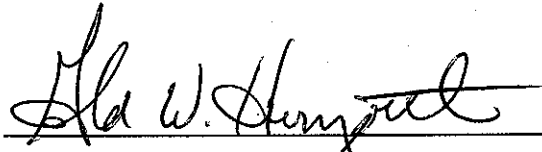
Title: Chairman of the County Board

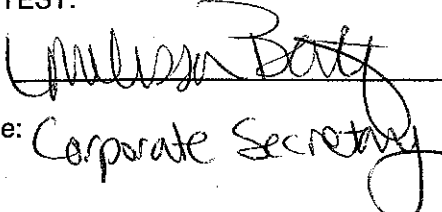
RECOMMENDED FOR EXECUTION

Martin G. Buehler, P.E.
Director of Transportation/ County Engineer
Lake County

Executed by the ENGINEER:

ATTEST:



By 

Gerald W. Heimsoth, P.E.

Title: Corporate Secretary

Title: President

Note: Three (3) Original Executed Contracts – (2) Lake County; (1) Consultant

Exhibit A - Construction Engineering

Route: Delany Road
 Local Agency: Lake County Division of Transportation
 (Municipality/Township/County)
 Section: 00-00093-18-WR
 Project: Delany Rd - York House Rd to Wadsworth Rd
 Job No.: _____

*Firm's approved rates on file with IDOT'S
 Bureau of Accounting and Auditing:
 Overhead Rate 140.93%
 Complexity Factor 0.00
 Working Days 189

Method of Compensation:
 Cost Plus Fixed Fee 1 $14.5\%[DL + R(DL + OH(DL) + IHDC)]$
 Cost Plus Fixed Fee 2 $14.5\%[DL + R(DL + 1.4(DL) + IHDC)]$
 Cost Plus Fixed Fee 3 $14.5\%[2.3 + R]DL + IHDC]$
 Specific Rate
 Lump Sum

Cost Estimate of Consultant's Services in Dollars

Element of Work	Employee Classification	Man-Hours	Payroll Rate	Payroll Costs (DL)	Overhead*	Services by Others	In-House Direct Costs (IHDC)	Profit	Total
Construction Startup	*	71	\$32.08	\$2,277.79	\$3,210.09		\$5,754.50	\$1,630.15	\$12,872.53
Pre-Construction Conference	*	23	\$32.08	\$737.88	\$1,039.89		\$5,754.50	\$1,092.18	\$8,624.44
Construction Stakeout - Check Layout Only	*	260	\$32.08	\$8,341.21	\$11,755.27		\$5,754.50	\$3,748.39	\$29,599.38
Construction Observation / Documentation	*	7410	\$32.08	\$237,724.60	\$335,025.28		\$5,754.50	\$83,883.14	\$662,387.52
Project Close-out	*	584	\$32.08	\$18,735.65	\$26,404.15		\$5,754.50	\$7,379.67	\$58,273.98
Construction Record Drawings	*	88	\$32.08	\$2,823.18	\$3,978.71		\$5,754.50	\$1,820.68	\$14,377.06
Shop Drawing Review / Catalog Cut Review	*	40	\$32.08	\$1,283.26	\$1,808.50		\$5,754.50	\$1,282.71	\$10,128.98
Project Management & Administration	*	40	\$61.81	\$2,472.25	\$3,484.14			\$863.68	\$6,820.07
Soil and Material Consultants					\$11,030.00				\$11,030.00
Totals		8516		\$274,395.83	\$386,706.04	\$11,030.00	\$40,281.50	\$101,700.59	\$814,113.96

* See attached

SCOPE OF WORK BREAKDOWN
Lake County Division of Transportation
Delany Rd - York House Rd to Wadsworth Rd

Task	Sub-Task	Activity	Project Manager	Construction Coordinator	Resident Engineer	Assistant Resident Engineer	Construction Engineer	Party Chief	Survey Crew Member	Project Engineer	Engineer Intern
1. Construction Engineering / Phase III Assis.	Total		150	168	432	3485	2755	196	120	40	1170
	Task Total:	8476	110	168	432	3485	2755	196	120	40	1170
	080 Construction Startup	Subtotal:	71	4	19	44					
	Review Plans, Specifications and Contract Documents				11	16					
	Site Visit with Contractor			4	4	4					
	Utility Coordination Including On-site Meetings				4	20					
	Set Up Project Documentation			4		4					
081 Pre-Construction Conference	Subtotal:	23		4	13	6					
	Preparation				8						
	Attendance				4	4					
	Meeting Minutes				1	2					
082 Construction Stakeout - Check Layout Only	Subtotal:	260						140	120		
	Cross Sections (existing, subgrade and final) - staged construction							140	120		
083 Construction Observation / Documentation	Subtotal:	7410	106	144	360	3115	2515				1170
	Resident Engineer (72 weeks x 5 days/week x 1 hrs/day)				360						
	Assistant Resident Engineer (25 weeks x 5 days/week x 8 hrs/day + 47 weeks x 5 days/week x 9 hrs/day)					3115					
	Construction Engineer (10 weeks x 5 days/week x 8 hrs/day + 47 weeks x 5 days/week x 9 hrs/day)						2515				
	Engineer Intern (26 weeks x 5 days/week x 9 hrs/day)										1170
	Construction Coordinator site visits (2 hrs/week x 72 weeks)			144							
	Project Manager site visits (2 hrs/week x 53 weeks)		106								

SCOPE OF WORK BREAKDOWN
Lake County Division of Transportation
Delany Rd - York House Rd to Wadsworth Rd

Task	Sub-Task	Activity	Project Manager	Construction Coordinator	Resident Engineer	Assistant Resident Engineer	Construction Engineer	Party Chief	Survey Crew Member	Project Engineer	Engineer Intern
084 Project Close-out	Subtotal:	584		16	40	312	216				
	Develop Punch List Items	24				8	16				
	Coordinate Punch List Completion	20			4	8	8				
	Inspect Punch List Items	24				8	16				
	Final Walk Through with Client	16		8	8						
	Pre-final and Final Pay Estimates	32				32					
	Complete Documentation Including Material Certification	468		8	28	256	176				
085 Construction Record Drawings	Subtotal:	88				8	24	56			
	Plan Sheets	40				8	16	16			
	Cross Sections	48					8	40			
086 Shop Drawing Review / Catalog Cut Review	Subtotal:	40								40	
	Retaining Walls	24								24	
	Traffic Signals	16								16	
2. Project Management & Administration	Task Total:	40	40								
	Subtotal:	40	40								
010 Project Management & Administration	Subtotal:	40	40								
	Project Management	40	40								





Average Hourly Project Rates

Route Delany Road
 Section 00-00093-18-WR
 County Lake
 Job No. _____
 PTB/Item _____

Consultant Ciorba Group, Inc

Date 09/30/11

Sheet 1 OF 1

PAYROLL CLASSIFICATION	AVG HOURLY RATES	TOTAL PROJECT RATES			Construction Engineering / Phase III Assis.			Project Management & Administration		
		Hours	% Part.	Wgtd Avg	Hours	% Part.	Wgtd Avg	Hours	% Part.	Wgtd Avg
Project Manager	\$61.81	150	1.76%	1.09	110	1.30%	0.80	40	100.00%	61.81
Construction Coordinator	\$54.02	168	1.97%	1.07	168	1.98%	1.07			
Resident Engineer	\$42.38	432	5.07%	2.15	432	5.10%	2.16			
Assistant Resident Engineer	\$36.00	3485	40.92%	14.73	3485	41.12%	14.80			
Construction Engineer	\$29.67	2755	32.35%	9.60	2755	32.50%	9.64			
Party Chief	\$31.79	196	2.30%	0.73	196	2.31%	0.74			
Survey Crew Member	\$29.60	120	1.41%	0.42	120	1.42%	0.42			
Project Engineer	\$50.95	40	0.47%	0.24	40	0.47%	0.24			
Engineer Intern	\$16.00	1170	13.74%	2.20	1170	13.80%	2.21			
TOTALS		8516	100%	\$32.22	8476	100%	\$32.08	40	100%	\$61.81

IN-HOUSE DIRECT COSTS
Lake County Division of Transportation
Delany Rd - York House Rd to Wadsworth Rd
PHASE III

Construction Engineering / Phase III Assis.

Description	Unit	Unit Cost	Quantity	Extended Cost
CADD Charges	hour	\$ 15.00	40	\$ 600.00
Copies	sheet	\$ 0.10	100	\$ 10.00
Full Size Prints	sheet	\$ 1.25	150	\$ 187.50
Vehicle (mileage)	mile	\$ 0.51	800	\$ 404.00
Vehicle (day)	day	\$ 45.00	800	\$ 36,000.00
Cell Phone	month	\$ 70.00	44	\$ 3,080.00

Total: \$ 40,281.50



office: 1-847-870-0544
fax: 1-847-870-0661
www.soilandmaterialconsultants.com
us@soilandmaterialconsultants.com

September 28, 2011
Proposal No. 12,202

Mr. Duane O'Laughlin, P.E.
Ciorba Group, Inc.
5507 N. Cumberland Ave., Suite 402
Chicago, IL 60656

Re: Soil and Construction Material Testing
Delany Road
York House Road to Wadsworth Road
Lake County, Illinois

Dear Mr. O'Laughlin:

Submitted for your consideration is our proposal to provide soil and construction material testing on a will-call basis initiated by your office or representative.

Attached is our Schedule of Fees for anticipated services. Note that hourly rates are inclusive of mileage and equipment charges. Based on available information and our experience on similar projects, we estimate a charge of \$11,030.00 may be incurred for the anticipated services. Actual billing will be on a unit price basis and you will only be billed for those services actually provided. Final billing may be less than or greater than the estimated charge. Requests for services not included within the scope of this proposal will be provided at our established unit prices.

Thank you for the opportunity of submitting this proposal, which includes the attached General Conditions. If acceptable, please sign and return one copy to our office. Further, please include applicable plans and specifications, if not already submitted.

Very truly yours,

SOIL AND MATERIAL CONSULTANTS, INC.

Thomas P. Johnson, P.E.
President

TPJ:ek

Proposal Accepted By:

Client _____

Street _____

Town _____ State _____ Zip Code _____

Phone () _____ Fax () _____

Signature _____ Position _____

Printed Name _____ Date _____

8 WEST COLLEGE DRIVE • ARLINGTON HEIGHTS, IL 60004

SOIL BORINGS • SITE INVESTIGATIONS • PAVEMENT INVESTIGATIONS • GEOTECHNICAL ENGINEERING
TESTING OF • SOIL • ASPHALT • CONCRETE • MORTAR • STEEL

Proposal No. 12,202
 Re: Delany Road
 York House Road to Wadsworth Road
 Lake County, Illinois

SOIL AND MATERIAL CONSULTANTS, INC.

SCHEDULE OF FEES

Effective 1-1-11

AGGREGATE AND SOIL

<u>Service</u>	<u>Est. Work Units</u>	<u>Fee</u>	<u>Cost</u>
<u>Field Testing</u>			
Technician – Earth Excavation (10 days @ 8 hours/day)	80 hours	\$ 85.00 /hour 340.00 /day min.	\$ 6,800.00
Technician – Aggregate Subgrade (6 days @ 6 hours/day)	36 hours	\$ 85.00 /hour 340.00 /day min.	\$ 3,060.00
<u>Laboratory Testing</u>			
Standard Proctor	4 each	\$ 130.00 each	\$ 520.00
<u>Engineering</u>			
Senior Engineer (P.E.) - includes project administrations field/laboratory engineering, consultation and report review	5 hours	\$ 130.00 /hour	\$ 650.00
Estimated Cost:			\$ 11,030.00

Billing Notes:

Hourly Charges: Portal To Portal
 Weekdays over 8 hours/day: Hourly Rate x 1.5

Saturdays: Hourly Rate x 1.5
 Sundays: Hourly Rate x 2.0

TERMS AND CONDITIONS

Soil and Material Consultants, Inc. (SMC) scope of work defined in the proposal was based on information provided by the client. If incomplete, inaccurate or if unexpected site conditions are discovered, the scope of work may change.

GEOTECHNICAL INVESTIGATIONS

Client will furnish SMC with right-of-access to the site. SMC will take reasonable precautions to minimize site damage due to its operations, but has not included in the fee the cost of restoration of any resulting damage. SMC shall not be liable for damage or injury due to encountering subsurface structures (pipes, tanks, utilities or others) not called to SMC's attention in writing or are not correctly shown on the drawings furnished by client or client's representative. If the client desires, SMC will restore any damage to the site and add the cost of restoration to the fee.

Field work, laboratory testing and engineering analysis will be performed in accordance with generally accepted soil and foundation engineering practices. Samples are retained in our laboratory for 30 days from date of report and then destroyed unless other disposition is requested. The data reported applies only to the soils sampled and the conditions encountered at each boring location. This does not imply or guarantee that soils between borings will be identical in character. Isolated inclusions of better or poorer soils can be found on any site. SMC will not be liable for extra work or other consequences due to changed conditions encountered between borings.

Any exploration, testing and analysis associated with the investigation will be performed by SMC for the client's sole use to fulfill the purpose of this Agreement. SMC is not responsible for use or interpretation of the information by others. The client recognizes that subsurface conditions may vary from those encountered in borings or explorations. Information and recommendations developed by SMC are based solely on available information and for the currently proposed improvement.

Documents including but not limited to technical reports, original boring logs, field data, field notes, laboratory test data, calculations, reports of inspection and testing, geotechnical reports, technical reports, submittals and estimates furnished to the client or its agents pursuant to this agreement are not intended or represented to be suitable for reuse by the client or others on extensions of this project or on any other project. Any reuse without SMC's written consent will be at user's sole risk and without liability or legal exposure to SMC. User shall indemnify and hold harmless SMC from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. To the maximum extent permitted by law, the Client agrees to limit SMC liability for clients' damages to \$100,000 or the fee, whichever is lesser. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

Soil and Material Consultants, Inc. is a Professional Engineering Corporation. Engineering services are often completed by extension through technical staff. The unit rates presented in this proposal do not reflect charges associated with organized labor. Future agreements, if any, with organized labor will invalidate some of the unit rates presented. Required rate adjustments will be presented to the client for acceptance prior to providing services at the adjusted rates.

Services are invoiced monthly for the preceding period. Client agrees to pay each invoice within thirty (30) days of receipt and further agrees to pay interest on all amounts not paid at the rate of 2.0% per month, an annual rate of 24%, from the due date. Client agrees to pay all reasonable costs of collection including staff time, court costs, Attorneys' fees and related expenses, if this account becomes delinquent. Client agrees that reports furnished to the client but not paid for in full remain the sole property of SMC and will not be used for design, construction, permits, licensing, sales or other gain.

TESTING SERVICES

Client shall furnish SMC with at least one working day's notice on any part-time (less than 8 hours/day) job when field personnel are requested. SMC shall make reasonable effort to provide field personnel in a timely manner but reserves the right to schedule field personnel as deemed appropriate. Minimum charges will be billed when work cancellations are received after field personnel have left for the project site.

SMC personnel will provide a professional service based on observations and testing of the work of a contractor, subcontractor, or other service/material provider, as specifically requested. SMC field personnel will look for general conformance with project specifications, plans and/or soil report but does not accept the responsibility to control or direct the work of others. Discrepancies noted by SMC office or field personnel will be referred to client or client's representative.

Testing Services furnished by SMC are defined as the taking of soil and/or material tests at various locations and the making of visual observations relating to earthwork, foundations, and/or materials as specifically requested by the client and agreed to by SMC, and will be limited to those specifically agreed services. Such services will be performed by SMC using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of the profession practicing in this or similar localities.

Observations and testing of soils and/or materials by SMC in no way implies a guarantee or warranty of the work of the contractor, subcontractor, or other service/material provider. SMC's work or failure to perform same shall in no way excuse such contractor, subcontractor or other service/material provider from liability in the event of subsequently discovered defects, omissions, errors, deficiencies or failure to perform in accordance with the project plans and specifications. SMC field personnel shall not be responsible for superintendence of the construction process nor direction of the work of the contractor, subcontractor, or other service/material provider. SMC's work shall not include determining or implementing the means, methods, techniques, sequences or procedures of construction. SMC shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare.