

MASTER SERVICES AGREEMENT FOR PROFESSIONAL SERVICES

TWIN PORTS TESTING INC. AND CITY OF DULUTH

THIS MASTER SERVICES AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), is made by and between the CITY OF DULUTH, a municipal corporation under laws of the State of Minnesota, hereinafter referred to as "City," and TWIN PORTS TESTING INC., 1301 North 3rd Street, Superior, WI 54880, hereinafter referred to as "Consultant," for the purpose of rendering services to the City.

WHEREAS, the City desires to utilize Consultant's geotechnical and material testing services on a non-exclusive, project by project basis to support the construction, operation, and maintenance of city systems; and

WHEREAS, Consultant has represented that it is qualified and willing to perform the services set forth in its proposal;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services.

Consultant will provide, upon written request of the city engineer in the form of a Statement of Work or similar documentation (each a "SOW"), the services identified in the City's letter to Consultant dated June 22, 2016, and suggested list, dated March 15, 2013. The June 22nd letter and March 15th list are collectively attached hereto as "**Exhibit A.**" The Consultant's testing fee schedule effective January 2016 is attached hereto as "**Exhibit B.**"

In the event of any conflict between Exhibit A, Exhibit B or a SOW and this Agreement, the terms and conditions of this Agreement shall be deemed to be controlling.

II. Professional Fees and Payment.

It is agreed between the parties that Consultant's maximum annual fee for the term of this Agreement shall not exceed the sum of Fifty-Thousand and no/100th Dollars (\$50,000.00) dollars, payable from various appropriate funds, departments, agencies, and objects. All bills for services rendered shall be submitted monthly to the City Engineer, or his/her designee, and shall be accompanied by such documentation as the City shall reasonably expect. Upon receipt of said request and appropriate documentation, the City shall reimburse Consultant up to the amount set forth above.

III. General Terms and Conditions.

1. **Amendments.** Any alterations, variations, modifications or waivers of terms of this Agreement including contract price shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.
2. **Assignment.** Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City.
3. **Data and Confidentiality.**
 - a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or assist Consultant wherever possible to obtain such records, data and information.
 - b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
 - c. All notes, reports, records and other data prepared under this Agreement shall become the property of the City upon completion or termination of the services of the Consultant. Any reuse of notes, reports, records or other data for anything other than its intended purpose will be at the

City's sole risk without liability or legal exposure to Consultant.

- d. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
 - e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
 - f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
 - g. Consultant shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.
4. Standard of Performance. Consultant agrees that all services to be provided to the City pursuant to this Agreement shall be in accordance with the generally accepted standards of the profession for the provision of services of this type.
 5. Contract Period. The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2017, unless terminated earlier as provided for herein.
 6. Termination. The City may, by giving written notice specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved of payment of any fees with respect to the services of Consultant which gave rise to such breach.
 7. Independent Contractor.
 - a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. Consultant and its employees shall not be considered employees of the City, and any and all claims that may arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and Public Employee Retirement Association (PERA) benefits. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.
 - b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
 - c. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.
 8. Indemnity. To the extent allowed by law, Consultant shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or

liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Consultant's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Consultant's employees or contractors, or d) the use of any materials supplied by the Consultant to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

9. Insurance. Consultant shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota.
 - a. Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. City of Duluth shall be named as Additional Insured by endorsement under the Public Liability and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming himself and City of Duluth. Upon execution of this Agreement, Consultant shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
 - b. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
 - c. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.

A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.

The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

10. Notices. Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

City:	City of Duluth 411 W First Street City Hall Room # 211 Duluth MN 55802 Attn: City Engineer
Consultant:	Twin Ports Testing Inc. 1301 N. 3 rd St. Superior, WI 54880 Attn: Michael A. Haapala

11. Civil Rights Assurances. Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:
 - a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
 - b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance

with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

12. Laws, Rules and Regulations. Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.
13. Applicable Law. This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.
14. Force Majeure. Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.
15. Severability. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.
16. Entire Agreement. It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.
17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

CITY OF DULUTH

TWIN PORTS TESTING, INC.

By:

By:

Mayor

Company Representative

Attest:

Its:

City Clerk

Title of Representative

Date Attested: _____

Date: _____

Countersigned:

City Auditor Date

Approved as to form:

Assistant City Attorney Date

EXHIBIT A



City of Duluth

DEPARTMENT OF PUBLIC WORKS/UTILITIES
Engineering Division
211 City Hall • Duluth MN 55802
(218) 730-5200 Fax: (218) 730-5907

June 22, 2016

Twin Ports Testing, Inc.
Attn: Brett Carlson
1301 N. 3rd Street
Superior, WI 54880

RE: Geotechnical and Materials Testing Services for 2016, City Project No. 1215

Dear Brett,

Thank you for contacting us about your services. The City of Duluth is interested in entering into a contract for geotechnical and materials testing services in 2016. This would be a one year base contract with an option to extend one additional year, with agreement from both parties. A new schedule of prices and an updated certificate of insurance will be incorporated into the extension.

If you are interested, please forward your fee schedule for 2016 and a current certificate of insurance to my attention by July 1, 2016. Thank you, and please let me know if you have any questions.

Sincerely,

Caroline Pedersen, PE
Chief Engineer of Transportation

March 15, 2013

Potential Scope of Services:

To provide the following examples of geotechnical and material testing services:

1. Laboratory tests of soils;
2. Grain size analysis;
3. Strength and compressibility testing;
4. Construction testing and observations:
 - a. Earthwork (excavation, observation, compaction control testing, special foundation installation)
 - b. Concrete
 - c. Petrographic
 - d. Bituminous

This is not intended to be a comprehensive list.

EXHIBIT B



FEE SCHEDULE EFFECTIVE JANUARY 2016

<u>Professional Consulting Services</u>	<u>Unit Prices</u>	<u>Concrete Testing Services</u>	<u>Unit Prices</u>
Principal Engineer	\$ 209.00 hr.	Concrete Compressive Strength	\$ 31.00 ea.
Senior Engineer	\$ 167.00 hr.	(ASTM C39 or AASHTO T22)	
Registered Professional Engineer (PE)	\$ 144.00 hr.	Concrete Cylinder Molds 4"x 8" ASTM 470	\$ 136.00 case
Project Engineer	\$ 123.00 hr.		
Staff Engineer	\$ 112.00 hr.	Concrete Cylinder Molds 6"x 12" ASTM 470	\$ 73.00 case
Engineering Assistant/CAD Technician	\$ 102.00 hr.		
Engineering Student	\$ 90.00 hr.	Flexural Strength of Concrete	
Civil Engineer Technician	\$ 82.00 hr.	(ASTM C78 or ASSHTO T97)	\$ 103.00 ea.
Project Manager	\$ 123.00 hr.		
Project Assistant	\$ 62.00 hr.	Concrete coring includes equipment and personnel	\$ 193.00 hr.
Survey Crew (Two-person)	\$ 187.00 hr.		
Litigation Preparation	\$ 231.00 hr.	Compressive Strength of Drilled Concrete Cores	
Court Time	\$ 309.00 hr.	(ASTM C42 or AASTO T24)	\$ 96.00 ea.
		Concrete mix design, theoretical design based on ACI 211	\$ 133.00 ea.
<u>Trip Charge</u>		Concrete mix design verification by trial mix	\$ 434.00 ea.
Trip Charge - CMT within 30-mile radius of TPT	\$ 48.00 trip		
Trip Charge - CMT outside 30-mile radius of TPT per Mile	\$ 1.10 mile		
Tractor/Trailer within 30-miles	\$ 169.00 day	Concrete Observation and Testing	
outside 30-miles	\$ 128.00 trip	Includes the following:	
	\$ 2.25 mile	• Sampling Freshly Mixed Concrete (ASTM C172)	
One-Ton 4-wheel Drive Truck w/Trailer within 30-miles	\$ 204.00 day	• Air Content (ASTM C231 or AASHTO T152)	
outside 30-miles	\$ 106.00 trip	• Slump of Freshly Mixed Concrete (ASTM C143 or AASHTO T119)	
	\$ 1.72 mile	• Temperature of Freshly Mixed Concrete (ASTM 1064 or ASSHTO T309)	
Open Pickup (Support Vehicle) within 30-miles	\$ 101.00 day	• Making and Curing Concrete Cylinders (ASTM C31 and ASSHTO T23)	\$ 90.00 hr.
outside 30-miles	\$ 71.00 trip		
	\$ 1.35 mile	Concrete Cylinder or Beam Pickup	\$ 90.00 hr.
<u>Soils and Aggregates Testing Services</u>	<u>Unit Prices</u>	Specific Gravity of Soil Solids	
Moisture Content of Soil/Aggregate (ASTM D2216 ASTM C566, or AASHTO T255)	\$ 29.00 ea.	(ASTM D854 or AASHTO 100)	\$ 160.00 ea.
		Clay Lumps and Friable Particles in	
Liquid and plastic limit of soils, plasticity index , (ASTM D4318 or AASHTO T89 & T90)	\$ 118.00 ea.	Aggregate (ASTM C142 or AASHTO T112)	\$ 135.00 ea.
Sieve Analysis of Fine and Coarse Aggregate (ASTM C117, C136 or AASHTO T11, 27)	\$ 118.00 ea.	Modified Proctor (Moisture density relations of soil-aggregate ASTM D1557 or AASHTO T180)	\$ 155.00 ea.
Sieve Analysis of Fine Aggregate only (ASTM C117, C136 or AASHTO T11, 27)	\$ 98.00 ea.	Standard Proctor (Moisture density relations of soil-aggregate (ASTM D698 or AASHTO T99)	\$ 155.00 ea.
Material Finer than #200 Sieve (ASTM C117, D1140 or AASHTO T11)	\$ 73.00 ea.	Sample Preparation (cohesive soils)	\$ 146.00 ea.
Sieve analysis of Coarse Aggregate only (ASTM C136 or AASHTO T27)	\$ 90.00 ea.	One-point Proctor Verification	\$ 90.00 ea.
Particle Size Analysis of Soils (ASTM D 422 or ASSTHO T88)	\$ 216.00 ea.	In-Place Density & Water Content of Soil-Aggregate Nuclear Method (ASTM D6938 AASHTO T310)	\$ 90.00 hr.
Single-faced fracture (WIDOT)	\$ 83.00 ea.	Density and Unit Weight of Soil in Place by the Sand-Cone Method (ASTM D1556 or AASHTO T191)	\$ 90.00 hr.
Double-faced fracture (WIDOT)	\$ 87.00 ea.	Unconfined Compressive Strength of Cohesive Soil (ASTM D2166 or AASHTO T208) (includes extrusion, density and moisture)	\$ 90.00 ea.
Unit weight and voids in aggregate (ASTMC29 or AASHTO T19)	\$ 101.00 ea.	Extrusion of Shelby Tube (for visual inspection only)	\$ 45.00 ea.
Organic impurities in fine aggregate for concrete (ASTM C40 or AASHTO T21)	\$ 93.00 ea.	Pocket Geotester (Pentrometer) Lab Test	\$ 10.00 ea.
Specific Gravity and Absorption of Fine Aggregate (ASTM C128 or AASHTO T84)	\$ 160.00 ea.	Pocket Geotester (Pentrometer) Field Test	\$ 90.00 hr.
Specific Gravity and Absorption of Coarse Aggregate (ASTM C127 or AASHTO T85)	\$ 160.00 ea.	Flat Particles, Elongated Particles, or Flat and Elongated Particles in Coarse Aggregate (ASTM D4791, MNDOT, or WIDOT)	\$ 121.00 ea.

Grout/Masonry Testing Services

Grout Observation and Testing

Includes the following

- Sampling Freshly Mixed Concrete (ASTM C172)
- Slump of Freshly Mixed Concrete (ASTM C143)
- Air Content (ASTM C231)
- Temperature of Freshly Mixed Concrete (ASTM 1064)
- Making and Curing Grout Prisms (ASTM C1019)

Grout or Concrete Masonry Prisms pickup

Masonry Observation and Testing

Concrete Masonry Prism Compressive Strength (ASTM C1314)

Sampling and Testing Chemical-Resistance Mortars and Grout (ASTM C579)

Compressive Strength of Chemical-Resistance Mortars and Grout (ASTM C579)

Bituminous Pavement Testing Services

Quantitative Extraction of Bitumen From Bituminous Paving Mixtures, extraction only (ASTM D2172)

Quantitative Extraction of Bitumen From Bituminous Paving Mixtures, extraction and gradation (ASTM D2172, C117, and C136)

Bituminous Pavement coring includes equipment and personnel

Bulk Specific Gravity and Density of Non-Absorptive Compacted Bituminous Mixtures (ASTM D2726 or AASHTO T166)

Density of bituminous concrete in place by nuclear method (ASTM D-2950)

Unit Prices

\$ 90.00 hr.

\$ 90.00 hr.

\$ 90.00 hr.

\$ 205.00 ea.

\$ 90.00 hr.

\$ 31.00 ea.

\$ 205.00 ea.

\$ 319.00 ea.

\$ 193.00 hr.

\$ 57.00 ea.

\$ 90.00 hr.

Subsurface Exploration

ATV Rotary

Track Rotary Drilling

Truck Rotary Drilling

Thin Wall Sampling

Cone Penetration Test (CPT) Soundings

SCPT Soundings

Push Probe Sampling

DMT Soundings

Dynamic Cone Penetrometer (DCP)

Concrete Coring

Unit Prices

\$ 290.00 hr.

\$ 276.00 hr.

\$ 253.00 hr.

\$ 41.00 ea.

\$ 290.00 hr.

\$ 340.00 hr.

\$ 210.00 hr.

\$ 290.00 hr. (+daily fee of \$190)

\$ 40.00 day (+labor)

\$ 193.00 hr.

Variable Subsurface Explorations
(prices given on per project basis)

NQ Wireline Rock Coring

Vane Shear

Iowa Borehole

Pressuremeter

Borehole Abandonment

Ground Penetrating Radar (GPR)

Soil Electrical Resistivity

High Strain Dynamic Pile Testing

Overtime

Overtime Charges -hourly or test

(over 8 hrs/day, Mon-Fri, all day Saturday)

Double Time Charges -hourly or test

(all of Sunday and Holidays)

X 1.50

X 2.00

Subsistence

Subsistence (per person)

(charged for each day the technician (s) are required to stay overnight)

\$ 178.00 ea.

Drilling Per Diem

\$ 280.00 day

Additional Charges

Minimum 25-100% surcharge for same day service/rush charge

Prices are subject to change without notification

Saturday and Sunday minimum of 8 hours

Twin Ports Testing AASHTO Accreditation

Quality Systems - accredited since 2/15/1999

AASHTO R18, ASTM C1077 (Aggregate), ASTM C1077 (Concrete), and ASTM D3740 (Soil)

Soil - accredited since 12/1/1999

AASHTO R58, T88, T89, T90, T99, T180, T265, T310, ASTM D421, D422, D698, D1557, D2216, D4318, D6938

Aggregate - accredited since 2/15/1999

AASHTO T11, T21, T27, T84, T85, T248, T255, ASTM C40, C117, C127, C128, C136, C566, C702

Concrete - accredited since 2/15/1999

AASHTO M201, R60, T22, T23, T97, T119, T121, T152, T309, ASTM C31, C39, C78, C138, C143, C172, C231, C511, C1064, C1231 (7000 psi and below)