E-08

August 17, 2006

TO: Philip L. Nelson, City Manager

FROM: Brian Murphy, Assistant City Manager/Services
Steven J. Vandette, City Engineer

SUBJECT: **Agenda Item** – Approval of Subcontract with Testing Engineers & Consultants, Inc. for Testing Services provided for the Widening of Big Beaver from Rochester to Dequindre
Contract No. 05-4

RECOMMENDATION

Staff recommends that City Council approve the attached subcontract No. 05-5169/S1 with Testing Engineers & Consultants, Inc. (TEC) for testing services provided for the widening of Big Beaver from Rochester to Dequindre. Furthermore, staff recommends that the Mayor and City Clerk be authorized to execute the subcontract.

INFORMATION

The City entered into a three-year contract with TEC in 2006 for Professional Municipal Testing Services in accordance with Resolution #2006-03-143-E-4d. TEC has provided testing services to the city on many projects under various contracts over the years and has been used to provide these same services on federally funded road projects in the past.

The attached subcontract was approved by MDOT Local Agencies and if approved by City Council will allow the City to receive reimbursement for the services provided by TEC.

The construction phase of this project is essentially complete, except for some miscellaneous punch list and clean up work. The testing services provided by TEC are also complete and the city has received the final invoice for these testing services. Compensation is based on TEC's approved hourly rates in their proposal submitted for the Professional Municipal Testing Services. The maximum amount of this subcontract shall not exceed $31,961.34.

FUNDING

Funds for the testing services were paid from the 2005-06 and 2006-07 Major Road fund, account number 401479.7989.011055.

Prepared by: William J. Huotari, Deputy City Engineer
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SUBCONTRACT NO. 05-5169/S1
CONTROL SECTION NO. STU 63544
JOB NO. 83672
FED. PROJECT NO. STP 0563 (036)
FED. ITEM NO. YY 0259

CITY OF TROY

TESTING ENGINEERS & CONSULTANTS, INC. (TEC)

TESTING, ENGINEERING & CONSULTANT SERVICES CONTRACT

A SURFACE TRANSPORTATION PROJECT

THIS Contract, made and entered into as of this date of _____, by and between TEC, Consulting Engineers, of Troy, Michigan, hereinafter referred to as the "CONSULTANT", and the City of Troy, hereinafter referred to as the "LOCAL AGENCY."

WITNESSETH:

WHEREAS, the LOCAL AGENCY is planning to construct a road improvement project within its limits; and

WHEREAS, the LOCAL AGENCY desires to engage the professional services and assistance of the CONSULTANT to perform certain construction materials testing and inspection services, said work to be hereinafter referred to as the "SERVICES," required in connection with the construction of the following transportation improvements under the Surface Transportation Program, said improvements to be hereinafter referred to as the "PROJECT:"

> " Widening from four lanes to six lanes along Big Beaver Road, from Rochester Road to Dequindre Road; including concrete pavement Repairs, concrete paving, earthwork, drainage improvements, curb and gutter, and together with necessary related work; " and

WHEREAS, the LOCAL AGENCY has programmed the PROJECT with the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for construction with the use of Surface Transportation Program funds administered by the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the "FHWA;" and

WHEREAS, the CONSULTANT has reviewed the contract plans, specifications, requirements to the DEPARTMENT and FHWA, and is willing to render the SERVICES desired by the LOCAL AGENCY for the considerations hereinafter expressed; and

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WHEREAS, the CONSULTANT was selected utilizing a qualifications based selection (QBS) process; and

WHEREAS, the parties hereto have reached an understanding as to the scope of the work and the performance of the SERVICES on the PROJECT and desire to set forth this understanding in the form of a written contract;

NOW, THEREFORE, it is hereby agreed by and between the parties hereto that:

THE CONSULTANT SHALL:

1. Perform and conduct field checks and laboratory testing of materials and equipment to assure compliance with the contract specifications and requirements of the DEPARTMENT and the FHWA. Reference is made to the DEPARTMENT'S ~~XXXX~~ Standard Specifications for Construction Manual and the PROJECT's plans and proposal. ^2003

2. Provide DEPARTMENT'S Construction and Technology Division notification in a timely manner to provide for independent assurance testing as prescribed in the DEPARTMENT'S Soils and Procedure Manual and Construction Manual. Permit the LOCAL AGENCY, the DEPARTMENT, and other public agencies having an interest in the service, to be present during the time of performance of the services to allow for review and inspection of work procedures and performances.

3 Perform all work under the direction of the LOCAL AGENCY's Project Engineer.

4. Provide such reports and maintain such records of the PROJECT as are determined necessary by the PROJECT Engineer, the LOCAL AGENCY, the DEPARTMENT and the FHWA. Upon request by the LOCAL AGENCY, make available thereto all notes and records relating to any and all services performed, including inspector's diaries and worksheets. Have its official seal or other identification on all data furnished to the LOCAL AGENCY.

5. Govern all SERVICES by the applicable codes, laws, and standards of the LOCAL AGENCY, the DEPARTMENT, and the FHWA.

6. During the performance of the SERVICES herein provided for, be responsible for any loss or damage to samples and test documents requested by the LOCAL AGENCY while they are in its possession. Restoration of lost or damaged documents shall be at the CONSULTANT'S expense.

7. Attend conferences and make such trips as necessary to the LOCAL AGENCY'S offices and to the site of the work to confer with representatives of the LOCAL AGENCY, the DEPARTMENT or the FHWA as may be necessary in the carrying out of the work under this contract.

8. Follow standard accounting practices and permit representatives of the LOCAL AGENCY, the DEPARTMENT and the FHWA to audit and inspect its PROJECT books and records at any reasonable time. Such records are to be kept available for three (3) years from the date of the final payment of federal aid for work conducted under this contract.

a. The CONSULTANT shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract, said records to be hereinafter referred to as the "RECORDS." Separate accounts shall be established and maintained for all costs incurred under this Contract.

b. The CONSULTANT shall maintain the RECORDS for at least three (3) years from the date of final payment of federal aid made by the DEPARTMENT under this Contract. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the CONSULTANT shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

c. The DEPARTMENT, or their representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

d. If any part of the work is subcontracted, the CONSULTANT shall assure compliance with subsections (a), (b), and (c) above for all subcontracted work.

9. Have in its employ a sufficient number of qualified employees available to complete the SERVICES in accordance with the schedule for construction and completion of the PROJECT upon the authorization to proceed with the SERVICES as outlined herein.

10. Show evidence of Workers' Compensation Insurance, said insurance to be as required by law.

11. Commence work on the PROJECT as set forth in this contract only upon receipt of written notice from the Project Engineer that the CONSULTANT'S services are desired.

12. Submit billings to the LOCAL AGENCY as set forth in Section 14.

THE LOCAL AGENCY WILL:

13. Furnish TEC with the necessary information deemed appropriate to the furtherance and completion of its SERVICES as herein set forth.

Process instruction and work assignments as follows:

a. When it is desired to have TEC perform a specific SERVICE, inform TEC of the work to be performed by means of an "Instruction Letter" supplemented by verbal contacts which provide project information and authorizes the performance of SERVICES.

b. Have the right to withdraw individual work assignment upon which no work has been performed or is scheduled to commence within two (2) weeks from the date of notification of withdrawal.

14. Pay the CONSULTANT as soon as practical after receipt of billings of SERVICES of the kind and performed in the manner set forth above, said billing being subject to verification by the LOCAL AGENCY and approval by the Engineer. Payments shall be in accordance with Exhibit A, attached hereto and made a part hereof:

a. For work performed on a unit cost basis, which cost shall include full compensation for all labor, material, and equipment necessary to complete any requested unit of work, at the unit prices set forth in Exhibit A, attached hereto and made a part hereof.

b. For transportation and travel expenses.

1. CONSULTANT shall be reimbursed for actual mileage and travel expenses incurred by and paid to their employees in the performance of SERVICES requested by the LOCAL AGENCY. Said transportation and travel expenses shall not exceed the State of Michigan regulations. Amounts claimed for mileage and travel expenses paid to their employees, in the performance of SERVICES requested by the LOCAL AGENCY, shall be included along with a detailed breakdown of charges for SERVICES performed, by state and federal project, showing names of employees, dates, and amounts of mileage and travel expenses incurred.

2. Whenever the CONSULTANT performs services for the LOCAL AGENCY and other clients on the same trip, transportation and travel expenses shall all be pro-rated on the basis of hours worked for the LOCAL AGENCY and other clients.

Example:

Hours worked for the LOCAL AGENCY	3
Hours worked for other Clients	5
Total hours worked	8

3/8 of the transportation and travel expenses on that trip shall be charged to and paid by the LOCAL AGENCY.

3. The CONSULTANT shall make their records pertaining to mileage and travel expenses incurred and paid to employees available for audit.

c. Reimbursement for costs incurred are subject to the cost criteria as set forth in 48 C.F.R., Federal Acquisition Regulations, Part 31, incorporated herein by reference as if the same were repeated in full herein.

Facilities Cost of Capital - A pro-rated portion of the actual facilities cost of capital incurred by the CONSULTANT during work is reimbursable

only if the estimated facilities cost of capital was specifically identified in the cost proposal for this work (Exhibit A).

15. In the event this contract is terminated prior to completion of the requested SERVICES from the CONSULTANT, reimburse the CONSULTANT at the above stated rates for all of said SERVICES rendered prior to termination.

16. Consider the SERVICES on a specific project to be completed when all samples and test reports have been received and accepted by the LOCAL AGENCY, except for retention of records as provided in Section 8.

IT IS FURTHER AGREED THAT:

17. Approval of this contract by the DEPARTMENT in no way obligates the DEPARTMENT for any cost or other responsibilities, except for as fiscal agent for the FHWA with respect to making federal funds available for the SERVICES performed by the CONSULTANT for the LOCAL AGENCY.

18. Upon completion or termination of this contract, all documents prepared by the CONSULTANT, including field notes, investigations, studies, etc., as instruments of SERVICE shall become the property of the LOCAL AGENCY.

19. No portion of the PROJECT work, hereto before defined, shall be sublet, assigned, or otherwise disposed of except as herein provided or with the prior written consent of the LOCAL AGENCY and approval by the DEPARTMENT and the FHWA. Consent to sublet, assign or otherwise dispose of any portion of the SERVICES shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this contract.

20. All questions which may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, and the interpretation of plans and specifications shall be decided by the LOCAL AGENCY'S Project Engineer. All questions as to the satisfactory and acceptable fulfillment of the terms of this contract shall be decided by the LOCAL AGENCY.

21. The CONSULTANT and the LOCAL AGENCY specifically agree that in the event problems arise that may be the result of errors and/or omissions by the CONSULTANT or due to a failure of the CONSULTANT to otherwise perform in accordance with this contract, that the CONSULTANT will be held responsible with no cost to the LOCAL AGENCY, or in accordance with the LOCAL AGENCY'S dispute resolution process, if applicable.

22. Any change in SERVICES to be performed by the CONSULTANT involving extra compensation must be authorized in writing by the LOCAL AGENCY and approved by the DEPARTMENT and the FHWA prior to the performance thereof by the CONSULTANT and requires an amendment to this Contract.

23. In addition, the CONSULTANT shall comply with, and shall require any contractor or subcontractor to comply with, the following:

a. In connection with the performance of the PROJECT under this contract, the CONSULTANT (hereinafter in Appendix "A" referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix "A," attached hereto and made a part hereof and will require a similar covenant on the part of any contractor or subcontractor employed in the performance of this contract.

b. During the performance of this contract, the CONSULTANT for itself, its assignees, and successors in interest (hereinafter in Appendix "B" referred to as the "contractor") agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B," attached hereto and made a part hereof and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

c. The parties hereto further agree that they accept the DEPARTMENT'S Minority Business Enterprises/Women's Business Enterprises (MBE/WBE) Program with respect to the PROJECT and will abide by the provisions set forth in Appendix "C" attached hereto and made a part hereof, being an excerpt from Title 42 C.F.R. Part 23, more specifically 23.43(a)(1) and (2) thereof.

24. The CONSULTANT warrants that it has not employed or retained any company or person other than bona fide employees working solely for the CONSULTANT, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONSULTANT, 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 LOCAL AGENCY shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts or contingent fee.

25. The CONSULTANT specifically agrees that in the performance of SERVICES herein enumerated by it, or by an approved subcontractor, or anyone acting in its behalf, they will, to the best of their professional knowledge and ability, comply with any and all applicable state, federal, and local statutes, ordinances, and regulations.

26. No charges or claims for damages shall be made by the CONSULTANT for delays or hindrances from any cause whatsoever during the progress of any portions of the SERVICES specified in this contract, except as hereinafter provided.

In case of a substantial delay on the part of the LOCAL AGENCY in providing to the CONSULTANT either the necessary information or approval to proceed with the work, resulting, through no fault of the CONSULTANT, in delays of such extent as to require the CONSULTANT to perform its work under changed conditions not contemplated by the parties, the LOCAL AGENCY will consider supplemental compensation limited to increased costs

incurred as a direct result of such delays. Any claim for supplemental compensation must be in writing and accompanied by substantiating data. Authorization of such supplemental compensation shall be by an amendment to this contract subject to prior approval by the DEPARTMENT and the FHWA.

When delays are caused by circumstances or conditions beyond the control of the CONSULTANT as determined by the LOCAL AGENCY, the CONSULTANT shall be granted an extension of time for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the permitting of the CONSULTANT to proceed to complete the SERVICES, or any part of them, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the LOCAL AGENCY of any of its rights herein set forth.

27. In case the CONSULTANT deems extra compensation will be due it for work or materials not clearly covered in this contract, or not ordered by the LOCAL AGENCY as a change, or due to changed conditions, the CONSULTANT shall notify the LOCAL AGENCY in writing of its intention to make claim for such extra compensation before beginning such work. Failure on the part of the CONSULTANT to give such notification will constitute a waiver of the claim for such extra compensation. The filing of such notice by the CONSULTANT shall not in any way be construed to establish the validity of the claim. Such extra compensation shall be provided only by amendment to this contract with approval of the DEPARTMENT and the FHWA.

28. The CONSULTANT agrees to obtain the necessary liability insurance, acceptable to the LOCAL AGENCY, naming the City of Troy, the Michigan State Transportation Commission, and the Michigan Department of Transportation as insured, and to provide the LOCAL AGENCY with evidence of said insurance, and to indemnify and save harmless the LOCAL AGENCY, the Michigan State Transportation Commission, and the DEPARTMENT, their officers, agents and employees from any and all claims and losses occurring or resulting to any person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the CONSULTANT in the performance of this contract.

29. The CONSULTANT'S signature on this Contract constitutes the CONSULTANT'S certification of "status" under penalty of perjury under the laws of the United States in respect to 49 CFR Part 29 pursuant to Executive Order 12549.

The certification which is included as a part of this Contract as Attachment "A," is Appendix A of 49 CFR Part 29, and applies to the CONSULTANT (referred to in Appendix A of 49 CFR Part 29 as "the prospective primary participant").

The CONSULTANT is responsible for obtaining the same certification from all subcontractors under this contract by inserting the following paragraph in all subcontracts:

> "The subcontractor's signature on this Contract constitutes the subcontractor's certification of `status' under penalty of perjury under the laws of the United States in respect to 49 CFR Part 29 pursuant to Executive Order 12549. The certification which is included as a part of this Contract as Attachment "B," is Appendix B of 49 CFR Part 29."

This certification is required of all subcontractors, testing laboratories, and other lower tier participants with which the CONSULTANT enters into a written arrangement for the procurement of goods or services provided for in this Contract.

30. This contract shall be terminated upon advisement to the CONSULTANT by the LOCAL AGENCY that its SERVICES are completed and accepted.

31. The CONSULTANT hereby agrees that the costs reported to the LOCAL AGENCY for this Contract shall represent only those items which are properly chargeable in accordance with this Contract. The CONSULTANT also hereby certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.

32. Upon execution of this contract by the parties hereto, the same shall become binding on the parties hereto and their successors and assigns, until such time as all work contemplated hereunder is complete, or until such time as this contract is terminated by mutual consent of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized agents and representatives the day and year first above written.

TESTING ENGINEERS & CONSULTANTS, INC.

BY: _____

TITLE: EXECUTIVE VICE PRESIDENT - RUBEN E. RAMOS

BY: _____

TITLE: Manager Sales and Marketing LINDA A. BLACK

CITY OF TROY

BY: _____

TITLE: Mayor- Louise Schilling

BY: _____

TITLE: City Clerk- Tonni L. Bartholomew

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.

6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.

7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.

9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March, 1998

APPENDIX B

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as following:

1. Compliance with Regulations: The contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 27, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or natural origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities, as may be determined by the Michigan Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Michigan Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts is has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Michigan Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

   (b) Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 of every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Michigan Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Michigan Department of Transportation to enter into such litigation to protect the interests of the state, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

General Requirements for Recipients

Excerpts from USDOT Regulation
49 CFR, Part 23, Section 23.43

A. Policy: It is the policy of the Department that MBE as defined in 49 CFR, Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the MBE requirements of 49 CFR, Part 23, apply to this contract.

B. MBE Obligation: The recipient or its contractor agrees to ensure that MBE as defined in 49 CFR, Part 23, has the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23, to ensure that MBE has the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of departmentally-assisted contracts.

C. If, as a condition of assistance, the recipient has submitted and the department has approved a minority business enterprise affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to this recipient of its failure to carry out the approved program, the Department shall impose such sanctions as noted in 49 CFR, Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future departmental, financial assistance.

D. The Department hereby advises each recipient, contractor, or subcontractor that failure to carry out the requirements set forth in Section 23.43(a) 49 CFR, Part 23, shall constitute a breach of contract, and after the notification of the USDOT, may result in termination of the agreement or contract by the Department or such remedy as the Department deems appropriate.

SUBCONTRACT NO. 05-5169/SA1
CONTROL SECTION NO. STU 63544
JOB NO. 83672
FED. PROJECT NO. STP 0563 (036)
FED. ITEM NO. YY 0259

CERTIFICATION

I hereby certify that I am EXECUTIVE VICE PRESIDENT and a duly authorized representative of the firm of Testing Engineers & Consultants, Inc., whose address is 1343 Rochester Road, PO Box 249, Troy, MI 48099 and that neither I nor the above firm I here represent has:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other that a bona fide employee working solely for me or the above Testing Engineers & Consultants, Inc.) to solicit or secure this contract.

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contact, or

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Testing Engineers & Consultants, Inc.) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract:

except as here expressly stated (if any):

I acknowledge that this certification is to be furnished to the Michigan Department of Transportation in connection with this contract involving participation of state and/or federal funds, and is subject to applicable state and federal laws, both criminal and civil.

8/16/06
Date

Signature

ATTACHMENT A

(This is a reproduction of Appendix A of 49 CFR Part 29)

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposed," and "voluntarily excluded" as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules impending Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
   A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
   B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
   C. Are not presently indicated for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
   D. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ATTACHMENT B
(This is a reproduction of Appendix B of 49 C.F.R. Part 29)
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction," without notification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone No. (517) 335-2513 or (517) 335-2514).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

(Federal Register Doc. 88-11561 Filed 5-25-88; 8:45 a.m.) March 9, 1989

Testing Engineers & Consultants, Inc.

City of Troy
February 22,2006

TEC Proposal: 010-06-0127

UNIT RATES

A. CONSTRUCTION SERVICES

1.0 TECHNICAL, ENGINEERING AND CONSULTING SERVICES

1.1 Engineering Technician (Soils, Concrete, Bituminous)	Hour	$ 30.00
1.2 Roof Inspector	Hour	$ 36.00
1.3 Structural Steel Inspector	Hour	$ 40.00
1.4 Senior Engineer Review	Hour	$ 78.00
1.5 Project Manager	Hour	$ 84.00
1.6 Professional Engineer	Hour	$ 90.00
1.7 Deposition, Expert Witness, etc.	Hour	$150.00

2.0 LABORATORY SERVICES

2.1 Aggregate		
a. Moisture Density Relationship, (Proctor)	Each	$ 95.00
b. Sieve Analysis	Each	$ 45.00
2.2 Bituminous		
a. Extraction (Percent Asphalt)	Each	$ 95.00
b. Sieve Analysis	Each	$ 45.00
c. Bulk Density of the Mix (unit weight)	Each	$ 45.00
2.3 Concrete		
a.. Compressive Strength	Each	$ 9.50
c. Pickup, hourly plus mileage	$28.00/hr. + $NC/mile	
2.4 Masonry		
a. Grout Specimen: Compressive Strength	Each	$ 18.00
b. Masonry Unit:		
1. Absorption & Unit Weight	Each	$ 50.00
2. Compressive Strength	Each	$ 40.00
c. Mortar Cubes: Compressive Strength	Each	$ 18.00
2.5 Fireproofing		
a. Fireproofing Density	Each	$ 50.00

3.0 EQUIPMENT AVAILABLE IN CONJUNCTION WITH TEC PERSONNEL

3.1 Soils/Bituminous Concrete Nuclear Density Gauge	Hour	$ 5.00
3.2 Structural Steel		
a. Magnetic Particle Equipment	Day	$ 50.00
b. Ultrasonic Testing Instrument	Day	$ 50.00
c. Ultrasonic Thickness Gauge	Day	$ 50.00
d. Dye Penetrant Equipment	Day	$ 50.00

UNIT RATES (cont.)

B. GEOTECHNICAL SERVICES

1.0. DRILLING

1.1 Mobilization and moving of drilling equipment on and off site
- a. Per Mile $3.15
- b. Per Day (Minimum) $300.00

1.2 ATV Charge $315.00

1.3 Boring Layout ..... Hour $ 85.00

1.4 Soil sampling using either split-barrel sampler (ASTM D1586) or liner sampler (ASTM D1587) at 2 1/2 foot intervals to 10 feet, and 5 foot thereafter

- a. 0' - 25' ..... Foot $ 9.50
- b. 26' - 50' ..... Foot $ 11.50
- c. 51' - 75' ..... Foot $ 13.75
- d. 76' - 100' ..... Foot $ 19.00
- e. 100+' ..... Quoted Upon Request

An additional charge of $1.00 per foot will be made for soils with more than 50 blows per foot or 4.5 tsf qu or strata containing boulders, slag, building rubble or broken concrete.

1.5 Additional Split-Spoon Sampling

- a. 0' - 50' ..... Each $ 14.00
- b. 50' - 100' ..... Each $ 18.00

1.6 Rock Coring

- a. $150.00 set up per hole, plus ..... Foot $ 40.00

1.7 Auger-drilling with profile sampling ..... Foot $ 8.50

1.8 Cost of special equipment or permit for moving drilling equipment about the site ..... At Cost Plus 15%

1.9 Set up time per hole or time required to move between boring locations in excess of 1/2 hour or stand by time ..... Hour $140.00

UNIT RATES (cont.)

B. GEOTECHNICAL SERVICES (cont.)

1.0. DRILLING (cont.)

1.1	Thin wall (Shelby) tubes	Each	$ 40.00
1.2	Drilling through concrete or asphalt	Inch	$ 13.00

2.0 LABORATORY TESTING

2.1	Atterberg Limits Determination (LL and PL)	Each	$ 84.00
2.2	Hydrometer & Sieve Analysis (Combined)	Each	$150.00
2.3	Loss on Ignition (Organic Content)	Each	$ 50.00
2.4	Sieve Analysis	Each	$ 50.00
2.5	Specific Gravity Determination	Each	$ 50.00
2.6	Standard Series (Moisture, Density, Rimac Unconfined)	Each	$ 10.50
2.7	Unconfined Compression Test (Split-spoon or Liner Sample)	Each	$ 16.00
2.8	Unconfined Compression Test (Undisturbed Tube Sample)	Each	$ 40.00
2.9	Permeability Test (Falling Head)	Each	$210.00
2.10	Permeability Test (Sample Prep)	Hour	$ 55.00

3.0. GEOTECHNICAL ENGINEERING

Professional and technical services for field supervision, analysis of test data, and engineering recommendations and consultation.

1.	Senior Engineer	Hour	$ 80.00
2.	Project Management/ Coordination	Hour	$ 85.00
3.	Geotechnical Engineer/Professional Engineer	Hour	$100.00

4.0 REMARKS

1. Rate for advanced laboratory testing will be quoted upon request.
2. Services and fees not listed above, such as the installation of groundwater monitoring wells, will be quoted upon request.

C. INDUSTRIAL HYGIENE

1.	Asbestos Sample Analysis (3day TAT)	Each	$ 17.00
2.	Asbestos Air Sample Analysis PCM (Included in Hourly Rate)		
3.	Transmission Electron Microscopy (1 day TAT)	Each	$125.00

UNIT RATES (cont.)

C. INDUSTRIAL HYGIENE (cont.)

4. Lead Paint Sample Analysis ..... Each $ 20.00
5. Specialized Air Quality Testing quoted on a per project basis
6. Asbestos and Lead Paint Building Survey quoted on a per project basis
7. Asbestos Removal Bid Specification quoted on a per project basis
8. Field Technician, ... Hour $ 50.00
9. Senior Project Manager, ... Hour $ 60.00
10. Certified Industrial Hygienist, ... Hour $ 110.00

TERMS AND CONDITIONS

1. TEC request a minimum of 24 hours notice for scheduling construction materials testing. 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 1.35 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. Laboratory work that needs immediate attention will be billed at 1.35 times the standard test rate. This applies to work required to be performed on Saturdays or after 5:00 p.m. on weekdays. Work required to be performed on a Sunday or Holiday will be billed at 2.0 times the standard test rate.

4. **No mileage charges will apply for technician or professional services.** Sample and cylinder pick-ups will be invoiced at **$28.00 per hour and no charge per mile**, portal-to-portal from TEC facilities. Lodging, subsistence and transportation for out-of-town services are invoiced at cost plus 20%.

5. 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.

TERMS AND CONDITIONS (cont.)

6. The TEC fee for depositions, court appearances, expert witness, legal assistance, litigation, preparation, or other legal work is $150.00 per hour plus expenses.

7. TEC will not be responsible for work performed on materials furnished by others not controlled by TEC.

8. 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.

9. 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.

11. 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.

CITY OF TROY
MDOT-CE-01.105.5
OTHER CHARGES

BIG BEAVER-ROCHESTER TO DEQUINDRE
STP-0563(036), YY259, 83672, STU6363544

CHECK DATE	CHECK NUMBER	PAYEE	DESCRIPTION	AMOUNT
11/17/05	130036	TESTING ENGINEERS & CONSULTANTS	TESTING SERVICES	$ 914.41
12/08/05	130769	TESTING ENGINEERS & CONSULTANTS	TESTING SERVICES	$ 9,077.39
12/29/05	131632	TESTING ENGINEERS & CONSULTANTS	TESTING SERVICES	$ 3,116.61
		TOTAL		$ 13,108.41

CITY OF TROY
MDOT-CE-01.105.5
OTHER CHARGES

BIG BEAVER-ROCHESTER TO DEQUINDRE
STP-0563(036), YY259, 83672, STU6363544

CHECK DATE	CHECK NUMBER	PAYEE	DESCRIPTION	AMOUNT
03/23/06	134692	TESTING ENGINEERS & CONSULTANTS	TESTING SERVICES	$ 1,121.00
		TOTAL		$ 1,121.00

CITY OF TROY
MDOT-CE-01.105.5
OTHER CHARGES

BIG BEAVER-ROCHESTER TO DEQUINDRE
STP-0563(036), YY259, 83672, STU6363544

CHECK DATE	CHECK NUMBER	PAYEE	DESCRIPTION	AMOUNT
04/13/06	135389	TESTING ENGINEERS & CONSULTANTS	TESTING SERVICES	$ 6,571.19
05/04/06	136271	TESTING ENGINEERS & CONSULTANTS	TESTING SERVICES	$ 5,068.66
07/06/06	138642	TESTING ENGINEERS & CONSULTANTS	TESTING SERVICES	$ 2,638.10
07/20/06	139199	TESTING ENGINEERS & CONSULTANTS	TESTING SERVICES	$ 3,393.96
		TOTAL		$ 17,671.91

CITY OF TROY
MDOT-CE-01.105.5
OTHER CHARGES

BIG BEAVER-ROCHESTER TO DEQUINDRE
STP-0563(036), YY259, 83672, STU6363544

CHECK DATE	CHECK NUMBER	PAYEE	DESCRIPTION	AMOUNT
		TESTING ENGINEERS & CONSULTANTS	TESTING SERVICES	$ 60.02
		TOTAL		$ 60.02