

K21-148

**AMENDMENT NO. 5 TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
TOLUNAY-WONG ENGINEERING, INC.**

**RR – TEST – 17 – 11
GEOTECHNICAL ENGINEERING & MATERIAL TESTING SERVICES**

THIS FIFTH AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented herein by LaToya Cantrell, Mayor (the “**City**”), and Tolunay-Wong Engineers, Inc., represented herein by Dustin S. Walker, Manager (the “**Testing Laboratory**”). The City and the Testing Laboratory may sometimes be collectively referred to as the “**Parties**.” This Amendment is effective as of April 18, 2021 (the “**Effective Date**”).

RECITALS

WHEREAS, the City and the Testing Laboratory are parties to a professional services agreement dated April 18, 2017 (the “**Agreement**”) for the provision of geotechnical engineering and materials testing services (the “**Services**”);

WHEREAS, on August 8, 2017, the City and the Testing Laboratory amended the Agreement for the first time to increase the total maximum aggregate compensation payable;

WHEREAS, on March 27, 2018, the City and the Testing Laboratory amended the Agreement for the second time to extend its term for continuity of services;

WHEREAS, on February 15, 2019, the City and the Testing Laboratory amended the Agreement for the third time to extend its term for continuity of services;

WHEREAS, on February 20, 2020, the City and the Testing Laboratory amended the Agreement for the fourth time to extend its term for continuity of services; and

WHEREAS, the City and the Testing Laboratory, both having the authority to do so, now seek to amend the Agreement for a fifth time to extend its term for continuity of services;

NOW THEREFORE, the City and the Testing Laboratory, for good and valuable consideration, agree as follows:

A. EXTENSION: The term of the Agreement is extended for one (1) year from April 18, 2021 through April 17, 2022.

B. LIVING WAGES:

1. **Definitions.** Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

2. **Compliance.** To the fullest extent permitted by law, the Testing Laboratory agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

- Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“Living Wage”);
- Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
- Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

3. **Current Living Wage.** In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. The Testing Laboratory shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

4. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Testing Laboratory acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1st using the Consumer Price Index figures provided for the calendar year ended December 31st of the preceding year, and thereafter on an annual basis.

5. **Subcontract Requirements.** As required by Section 70-804 of the City Code, the Testing Laboratory, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“Article”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

6. **Reporting.** On or before January 31st and upon request by the City, the Testing Laboratory shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance 1
340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

7. **Compliance Monitoring.** Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “OWD”) and/or the Chief Administrative Office (“CAO”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Testing Laboratory will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Testing Laboratory agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Testing Laboratory, payroll records and employee paychecks; and (ii) that the City may audit such records of the Testing Laboratory as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

8. **Remedies.** If the Testing Laboratory fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

C. **CONVICTED FELON STATEMENT:** The Testing Laboratory swears that it complies with City Code § 2- 8(c). No Testing Laboratory principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

D. **NON-SOLICITATION STATEMENT:** The Testing Laboratory swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Testing Laboratory has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.

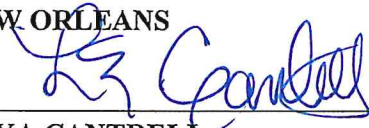
E. **ELECTRONIC SIGNATURE AND DELIVERY:** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Amendment.

F. PRIOR TERMS BINDING: Except as otherwise provided by this Amendment, the terms and conditions of the Agreement, as amended, remain in full force and effect.

IN WITNESS WHEREOF, the City and the Testing Laboratory, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY: _____

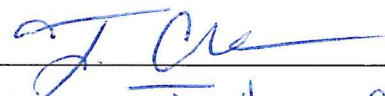

**LATOYA CANTRELL,
MAYOR**

Executed on this 5th day of April, 2021.

FORM AND LEGALITY APPROVED:

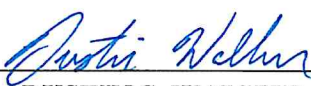
Law Department

By: _____


Printed Name: Travon Clark

TOLUNAY-WONG ENGINEERS, INC.

BY: _____


**DUSTIN S. WALKER,
MANAGER**
