



TOOELE COUNTY CORPORATION

CONTRACT # 16-10-07

CONTRACT FOR PROFESSIONAL SERVICES

WT Reference No. 6126PT181

BETWEEN: **TOOELE COUNTY DEPARTMENT OF ENGINEERING**
DIVISION OF ROADS ("Client")
47 South Main Street
Tooele, Utah 84074

AND: **WESTERN TECHNOLOGIES INC.** ("WT")
420 West Lawndale Drive
Salt Lake City, Utah 84115

FOR THE PROJECT: **Geotechnical Engineering Services**
Existing Pavement Evaluation ("Project")
Silver Avenue
Silver Avenue, West of Stockton
Stockton, Utah ("Site")

1.0 PROJECT DESCRIPTION

Based on information provided by Mr. Rob Thompson on October 25, 2016, the proposed pavement evaluation will be for approximately six mile section of Silver Avenue from the west edge of Stockton. Should any of our information or assumptions not be correct, the Client will notify WT immediately.

2.0 PURPOSE

The purpose of our geotechnical engineering services will be to evaluate the subsurface conditions to provide recommendations and/or discussion for the following:

- Existing Pavement Section
- Subgrade Soil Types and Strengths

3.0 SCOPE OF SERVICES

3.1 Field Exploration

We will conduct the following subsurface exploration program that is based on the project description and our knowledge of the general soil conditions in the area:

Pavement Areas - Six test borings to depths of five feet below the existing site grades.

All explorations will be advanced to the depths outlined unless refusal to auger drilling is encountered. A field engineer / geologist will log the borings, record blow counts of penetration tests, and obtain undisturbed and representative samples of soils encountered as conditions dictate.

3.2 Laboratory Testing

A geotechnical engineer will examine the samples and field logs and assign the laboratory tests. The following laboratory tests may be performed:

- Field moisture content
- In-situ soil density
- Maximum density-optimum moisture relationship
- Sieve analysis
- Liquid Limit and Plasticity Index
- California Bearing Ratio (CBR)

3.3 Analyses and Report

We will prepare a geotechnical engineering report that includes a description of the project, a discussion of the field and laboratory testing programs, a discussion of the subsurface conditions, and design recommendations as required to satisfy the purpose previously described.

4.0 SCHEDULE

We will proceed with geotechnical engineering services upon receipt of a signed contract with a PDF copy of our report submitted two weeks after completion of the fieldwork. If requested, verbal recommendations can be provided before the written report is submitted. Please inform us if this schedule does not meet your requirements.

5.0 ASSUMPTIONS

The following assumptions were made in preparation of this proposal:

- The site is marked in the field
- Traffic Control and Signage will be provided by the Client
- Any necessary permits will be provided by the Client
- The site is accessible to two-wheel drive vehicles
- Any Private underground utility lines have been located and marked by the Client
- The proposed borings will be used for geotechnical exploration and sampling only. No environmental information or data will be gathered or generated

We will contact Blue Stakes prior to mobilizing to the site. This service marks only the primary utility lines in the roadway and dedicated utility easements and usually does not locate tributary lateral lines on private property. WT requires the Client to provide all necessary information and drawings identifying the location of any underground lines or structures that may be on the subject property. The cost of repair of unknown, unmarked, or improperly marked utilities damaged during the work, subsequent loss of service, and damage to WT equipment shall be borne by the Client.

STANDARD TERMS AND CONDITIONS

The Agreement between Western Technologies Inc. ("WT") and Client shall include and be subject to WT's Proposal and these Standard Terms and Conditions. The terms of the Agreement shall prevail over any different or additional terms contained in any document to which WT's work relates. WT's commencement of work shall constitute Client's acceptance of the Agreement.

1. SERVICES

1.1 WT agrees to render such services requested in writing by Client that are stated in the Scope of Services or similar written agreement. WT shall have no responsibility to perform services beyond such requests, and none shall be imputed or implied.

1.2 The services rendered by WT are for the benefit of Client alone and relate only to conditions observed at specified locations at the time WT's work is performed. There are no intended third-party beneficiaries to this Agreement, and nothing herein shall create a contractual relationship with or claim or cause of action in favor of a third party against WT.

1.3 The presence of WT's field technicians or representatives, if called for in the Agreement, is for the provision of services hereunder, and does not include supervision or direction of the work of Client or its subcontractors. Neither the presence of, nor any observation or testing by WT personnel shall excuse Client or its subcontractors from any deficiencies in their work.

1.4 When performing its work, WT will take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Client shall indemnify, defend, and hold WT harmless from and against any damages to such structures and utilities that are not called to WT's attention and correctly shown on the plans furnished to WT. It is Client's obligation to contact appropriate utility companies and/or private utility locators for information regarding buried utilities, mark such utilities, and take other precautions to prevent damage or injury.

1.5 Client agrees that if Client commences litigation, mediation, arbitration, or any such proceeding against WT, WT shall have the right to withdraw and terminate ongoing work and services conducted for Client on any contract and project, in which event Client shall pay WT for work and services performed up to the time of termination.

2. PAYMENT

2.1 WT will invoice Client monthly for services performed. Client shall pay such invoices upon receipt without deduction for retention or offset. Failure to pay within 60 days of invoice shall operate to release WT from any and all claims that Client may have; Client further shall have no right to use or rely on any report prepared by WT, and shall return all such reporting to WT. Furthermore, WT shall have the right to immediately terminate and cease performance of all services then being performed for Client on any contract and project until all amounts owed are received by WT. Interest shall accrue on the unpaid balance of any invoice not paid in full within 30 days at the rate of 1.5% per month. Collection agency fees, attorneys' fees, and associated costs that are incurred by WT to collect past-due invoices (including post-judgment fees and costs) shall be payable by Client.

2.2 Estimates of fees are only estimates and shall not be regarded as "lump sum" or "fixed price" or "guaranteed maximum" compensation. Client remains obligated to pay WT's invoices for actual work performed, whether or not the fee estimate is exceeded. For work requested by Client that is additional to or outside the written Scope of Services and/or written service request, Client shall sign such documentation requesting such work or services and process and pay WT's invoices.

3. STANDARD OF CARE

3.1 The services referred to herein will be performed in accordance with the general standard of care practiced locally by providers of such services, and relate only to the conditions observed or samples tested at the time and place reported. WT makes and intends no other warranty or representation, express or implied. WT shall not be responsible for any consequences due to changed conditions or for the failure of any person or entity to perform or install work in accordance with the plans and specifications.

3.2 Soil, subsurface, and groundwater conditions can vary between and among sampling points and with time. WT makes no representation that the points selected for sampling are in any way representative of the entire site or project. Unless circumstances have changed justifying an earlier expiration of validity, geotechnical and earthwork reports are valid for a period of one year from the date of issuance; all other reports, including Phase I reports, are valid for a period of 180 days from the date of issuance.

3.3 Where WT's services involve geotechnical evaluations or field observation of earthwork, grading, filling, or compaction, Client agrees:

3.3.1 WT is not responsible for the manner in which such work is performed;

3.3.2 WT is not responsible for any work performed at any time when WT was not physically present and observing that specific work; and

3.3.3 For continuous observations, Client shall not allow grading, filling, or compaction to be performed at any time that WT is not physically present at the site, and shall restrict the amount and extent of such grading, filling and compaction to that which can be observed by WT at the site.

3.4 WT has no right, duty, or obligation to stop Client's or any of Client's subcontractor's work.

3.5 Client agrees and acknowledges that WT makes no recommendation or opinion other than those set forth in writing and contained in WT's reporting; WT makes no oral recommendations or opinions. Field and lab technicians are not engineers. Client acknowledges and agrees that it has no right to rely on, and that there will be no, express or implied recommendations or opinions of any sort from field or lab technicians.

3.6 Client is obligated to, and shall, directly and specifically notify WT as and when Client wants WT to perform services hereunder. WT shall be subject to no implied duties to observe or test, or to provide reports, other than the actual observation, testing, and reporting performed.

3.7 "Certification" means and implies the expression of professional opinion. It is not a warranty or guaranty.

4. INDEMNITY AND INSURANCE

4.1 NOTWITHSTANDING ANY OTHER PROVISION IN THE PARTIES' AGREEMENT, WT PROVIDES NO INDEMNITY, WARRANTY, OR GUARANTEE, EXPRESS OR IMPLIED, TO CLIENT OR TO ANY OTHER PERSON OR ENTITY.

4.2 Client shall be adequately insured. Client and its insurers jointly and severally waive subrogation against WT and its insurers.

5. LIMITATIONS OF LIABILITY

Client and WT recognize the relative risks and benefits of this Agreement, and agree to the fair allocation of risk between them as follows:

5.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, WT'S TOTAL AGGREGATE LIABILITY TO ANY PERSON OR ENTITY, INCLUDING CLIENT, ON ANY CLAIM, ACTION OR LIABILITY OF ANY KIND OR BASIS WHATSOEVER, IN ANY MANNER ARISING OUT OF THE WORK DONE BY WT SHALL BE STRICTLY LIMITED TO THE GREATER OF \$50,000 OR THE FEE CHARGED FOR WT'S SERVICES HEREUNDER.

5.2 WT shall not be liable for loss of profit, delay, or for any special, incidental, indirect, or consequential damages of any kind, nature or description, from any cause whatsoever.

5.3 No proceeding, action or claim of any kind whatsoever, whether in law or equity, may be brought against WT regarding any work performed by WT, more than four years after the cessation of WT's work.

5.4 EXCEPT FOR ENVIRONMENTAL SERVICES THAT SPECIFICALLY INCLUDE AN INDOOR MOLD SURVEY, NO ACTION OR CLAIM OF ANY KIND WHATSOEVER MAY BE BROUGHT AGAINST WT ARISING OUT OF THE PRESENCE OR EXISTENCE OF MOLD. ALL SUCH ACTIONS ARE ABSOLUTELY BARRED AND CLIENT ABSOLUTELY AND IRREVOCABLY RELEASES WT FROM ALL SUCH CLAIMS AND LIABILITIES.

5.5 No officer, director, principal, employee, or agent of WT shall ever be personally sued, joined, liable, or responsible regarding any claim whatsoever. ALL SUCH ACTIONS ARE ABSOLUTELY BARRED AND CLIENT ABSOLUTELY AND IRREVOCABLY RELEASES SUCH INDIVIDUALS FROM ALL ACTIONS, CLAIMS, LIABILITIES, AND RESPONSIBILITY.

6. HAZARDOUS MATERIALS AND OTHER SITE CONDITIONS

WT does not create, generate, arrange for or transport, dispose, own, or store hazardous materials or operate any such facility in the performance of its work. Client shall maintain possession of and be responsible for the removal and disposal of all hazardous materials including, but not limited to samples, drilling mud, fluids and cuttings, decontamination and well development fluids, and used protective gear and equipment. Client assumes full responsibility for compliance with the provisions of RCRA and any other federal or state statute or regulation governing the handling, treatment, or storage and disposal of hazardous wastes and pollutants. Client shall be solely responsible for notifying all appropriate agencies and prospective buyers of the existence of any hazardous or dangerous materials located on or in the project site, or discovered during the performance of the Agreement, as may be required or advised by such agencies and buyers.

7. PROPERTY

7.1 All work papers (including reports, field notes, laboratory notes, laboratory test data, calculations and other documents prepared by WT), electronic data files and other work product generated by or for WT in connection with the Scope of Work are the property of WT. Samples obtained shall remain the property of Client.

7.2 Client has the right to use the reports, recommendations, design criteria and similar information submitted to it by WT, provided that Client pays WT's invoices. Client expressly agrees that no information produced or provided by WT shall be used for or at any location or for any project or project extension that is not expressly set forth in this Agreement without WT's prior written permission.

7.3 Because data stored on electronic media can deteriorate or be modified without WT's knowledge or control, Client assumes all responsibility for the completeness, correctness, and/or readability of electronic data. Client will indemnify, defend, and hold WT harmless of and from the use of and any reliance upon any part of said electronic data and/or anything generated from them. The controlling document regarding any document prepared by WT shall remain and always be the signed hard-copy paper document, and not any electronic form or format of such document.

7.4 Client shall not assign this Agreement, any of WT's reporting or work product, or any legal or equitable claim involving WT, without the prior express written consent of WT. Any purported assignment without the prior express written consent of WT shall be null and void.

8. TERMINATION

In addition to termination otherwise authorized by law and equity, this Agreement may be terminated by either party upon providing written notice of termination.

9. WT NOT BOUND

WT shall not be bound by: any provision incorporating by reference any contract or term of any contract unless the term or terms incorporated by reference are specifically furnished to WT and are expressly agreed to in a writing signed by WT; any provision or agreement providing for or imposing liquidated damages however described or denominated; any provision waiving any right to a mechanic's lien; any provision conditioning payment for WT's services upon payment to Client by any third party; any provision requiring the application of law or jurisdiction other than that which applies to the place of the project; any provision permitting Client to take possession of any property of WT; or any provision requiring mediation or arbitration of any claim or dispute.

10. FEES AND COSTS

In the event of any claim or litigation arising out of the work, including the Agreement, the prevailing party shall be entitled to an award of its attorneys' fees, consultants' fees, and costs.

WT assumes that the Client will obtain permission to enter onto the site for our drilling equipment and personnel. WT's services will include backfilling the borings with gravel and patching the asphalt concrete with cold patch, unless otherwise directed or required. Please inform us if your requirements are any different.

6.0 FEES

The cost of our services, for the scope set forth herein will be a lump sum fee of **\$3,414.00**. Our fee includes discussion and interpretation of our findings with other members of the design team, but does not include meetings concerning construction or changes in design. If additional services are agreed upon, or we incur delays or costs associated with access of our equipment to the boring locations, then the fee will increase accordingly. Unless you sign this contract before expiration, the lump sum fee noted above is valid for 90 calendar days, after which time a review by WT will be required.

7.0 MANNER OF PAYMENT

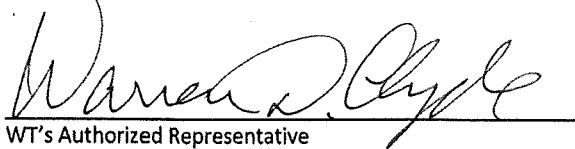
WT will invoice Client for total fees upon completion of services. Full payment is due upon receipt of our invoice.

8.0 NOTICE TO PROCEED

Notice for us to proceed is given upon our receipt of a signed copy of this contract. We understand that returning this signed contract will constitute permission by the owner for our entry onto the site.

The "Standard Terms and Conditions" set forth in WTI Form No. 120 (attached) are applicable and are incorporated herein. The provisions set forth in this Contract and in the Standard Terms and Conditions shall constitute the Contract between Client and WT with respect to the services to be provided.

EXECUTED BY WT:

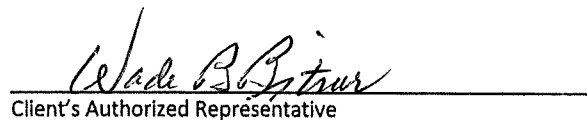

WT's Authorized Representative

Warren D. Clyde, P.E.
Typed or Printed Name

Principal
Title

October 25, 2016
Date

EXECUTED BY CLIENT:


Client's Authorized Representative

WADE B. BITNER
Typed or Printed Name

CHAIR - COUNTY COMMISSION
Title

25 OCTOBER 2016
Date