

October 23, 2015

Mr. Luis Perez Garcia III, P.E., C.F.M.
County Engineer/Utilities Department Director
Webb County - Engineering Department
1620 Santa Ursula Avenue, 2nd Floor
Laredo, Texas 78040



T: 956.523.4055
F: 956.523.5152
E: lperezgarcia@webbcountytx.gov

Re: Construction Materials Engineering
and Testing Services
Rio Bravo Soccer Field
Rio Bravo, Webb County, Texas
Part I - CET Proposal No.: M15026

Dear Mr. Perez Garcia:

Castle Engineering & Testing, LLC (CET) is pleased to express our interest in providing construction materials engineering and testing services for the referenced project and offer the following proposal for your consideration. *We understand that we have been chosen to provide these services for this publicly funded project. Therefore, by providing cost information we are not in violation of the Texas Professional Services Procurement Act.* This proposal consists of two parts: Part I – Proposal – Scope of Services and Compensation; Part II – Terms and Conditions (Attached). The following sections outline our understanding of the project and provide a description of the tasks to be performed.

SCOPE OF SERVICES

Our understanding of the required construction materials engineering and testing services for this project is based upon information provided by you or your designated representative. Our scope of services will include, but may not be limited to testing and observations in the following categories as scheduled: Earthwork Monitoring/Soils Testing and Concrete Sampling/Testing

- Services will be performed in a manner consistent with the level of care and skill ordinarily expected by members of the profession currently practicing under similar circumstances. No warranty, expressed, or implied, is made.
- Field services will be provided on a “call-out” basis when scheduled by your authorized representative. A minimum of 24 hours notice is required to schedule our services, *although we will attempt to meet requests in a short time frame.*



ESTIMATED COST OF SERVICES

Our not-to-exceed without written approval price for providing the above scope of services is **\$1,740.00** as shown on the following cost summary. Please recognize that this is an estimate only, based on the quantity of tests indicated in the breakdown provided below. If these quantities are exceeded due to unforeseen conditions or at the request of the contractor with written authorization by the client, additional fees will apply. However, we will keep you informed throughout the progress of the project and notify you of the budget conditions.

Earthwork Monitoring/Soils Testing	Quantity	Unit Rate	Total
Moisture Density Relationship for Soils (Proctor) Includes Sample Pick-Up, Lab Tech Time and Report	1	\$200.00	\$200.00
Moisture Density Relationship for Base (Proctor) Includes Sample Pick-Up, Lab Tech Time and Report	1	\$250.00	\$250.00
Liquid Limit, Plastic Limit and Plasticity Index Includes Lab Tech Time and Report	2	\$125.00	\$250.00
Material Finer Than the No. 200 Sieve Includes Lab Tech Time and Report	2	\$75.00	\$150.00
Gradation/Sieve Analysis for Base (Dry) Includes Lab Tech Time and Report	1	\$150.00	\$150.00
In-place Field Density Tests Minimum Charge Four (4) Test(s) Per Trip Includes Field Tech Time and Report	12	\$35.00	\$420.00
		Subtotal	\$1,420.00

Concrete Testing	Quantity	Unit Rate	Total
Compression Strength of Concrete Cylinders (Set's of Four (4) Cylinders) Includes Field Tech Time, Temperature Reading, Slump, Molding/Testing and Report	2	\$160.00	\$320.00
		Subtotal	\$320.00

Total Budget Estimate	\$1,740.00
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Authorization

Authorization to proceed with our work on this project will be provided by the authorized representative in the form of a signed Castle Professional Services Agreement (Part II – Terms and Conditions). Please return the proposal with your signature if you accept the terms and conditions described in this document. This proposal is valid if authorized within 30 days from the listed proposal date.

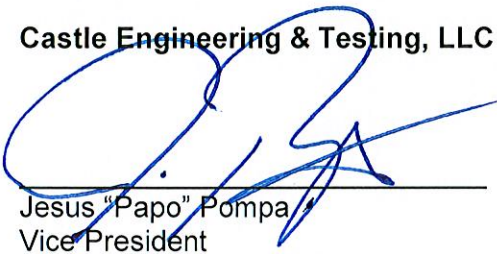
Reporting and Distribution

Field test results will be reported to your on-site representative at the time of testing, and written reports of the tests performed will be submitted to your attention. Reports can be distributed electronically upon request. Please provide us with a list of those whom you would like to receive testing results.

We appreciate the opportunity of providing our services for this project. If you have questions regarding this proposal or if we may be of further assistance, please contact our office.

Sincerely,

Castle Engineering & Testing, LLC



Jesus "Papo" Pompa
Vice President

Attachment(s): Professional Services Agreement (Part II – Terms and Conditions)

JMP-M15026

**CASTLE ENGINEERING & TESTING, LLC
PROFESSIONAL SERVICES AGREEMENT
PART II - TERMS AND CONDITIONS**

WHEREAS: This Professional Services Agreement is made and entered into between **Webb County-Engineering Department** ("Client") and **Castle Engineering & Testing, LLC** ("Engineer") a Texas corporation. This Agreement consists of two parts: **Part I** Proposal - Scope of Services and Compensation, **Part II** – Terms and Conditions.

ARTICLE 1: PROFESSIONAL SERVICES

1.1 **Services.** In connection with the property described in the Proposal, Engineer shall render the professional services ("Services") for the project described in the Proposal as outlined in the Proposal and any Amendments.

1.2 **Agreement.** The Professional Services Agreement includes the Proposal dated **October 23, 2015** and these Terms and Conditions (collectively, the "Agreement").

ARTICLE 2: PROPOSALS

2.1 **Scope.** The Proposal(s) shall identify the specific scope of Services to be performed and the amount and type of compensation for the specific services.

2.2 **Acceptance of Agreement.** Client shall authorize and Engineer shall commence work upon Engineer's receipt of the properly executed and signed Proposal(s), as may amended from time to time. If the Agreement is not executed by Client within thirty (30) days of the date tendered, it shall become invalid unless: (1) Engineer extends the time in writing; or (2) at the sole option of Engineer, Engineer accepts Client's oral authorization to proceed with the services, in which event the terms of the oral authorization shall be presumed to include all the terms of this Agreement. Engineer's performance of the services under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement in the oral authorization.

ARTICLE 3: CHANGES

3.1 **Changes.** The Engineer and Client may at any time, by written amendment, make changes within the general scope of individual Proposal(s) or relating to services to be performed. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performance of any services under individual Proposals, an equitable adjustment shall be made and reflected in a properly executed Amendment.

3.2 **Regulatory Changes.** In the event that there are modifications or additions to regulatory requirements relating to the services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the services provided for in this Agreement and subsequent Proposals shall be reflected in an appropriate Proposal Amendment.

ARTICLE 4: THE TERM

4.1 **Term.** Engineer shall be retained by Client as of the date Client executes the attached Proposal until the Services have been fully performed or until the Engineer's Services are terminated under provisions of the Agreement. Engineer will pursue completion of Services in accordance with the timely completion specified in the Proposal and any amendments thereto. Engineer shall not be liable or

responsible for any delays caused by circumstances beyond Engineer's control.

ARTICLE 5: DUTIES

5.1 **Access.** Client will provide Engineer with access to the Property or to any other site as required by Engineer for performance of the Services.

5.2 **Client-furnished Data.** Client shall provide all criteria and full information as to Client's requirements for the Project, designate a person to act with authority on Client's behalf in respect to all aspects of the Project, examine and respond promptly to Engineer's submissions, and give prompt written notice to Engineer whenever he observes or otherwise becomes aware of any defect in the work.

Client shall also do the following and pay all costs incident thereto: Furnish to Engineer core borings, probings and subsurface exploration, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements, and any other information previously made available to the Client, which may be required by Engineer, all of which Engineer may rely upon in performing its Services.

Client shall provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of contractor(s)' applications for payment, and any inspection services to determine if contractor(s) are performing the work.

5.3 **Other Information.** Engineer will rely upon commonly used sources of data, including database searches and agency contacts. Engineer does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.

5.4 **Ownership of Documents.** All designs, drawings, specifications, documents, and other work products of the engineer, whether in hard copy or electronic form, are instruments of service for the services and are owned by the Engineer regardless of whether or not services are completed. Reuse, change or alteration by the client or by others acting through or on behalf of the client is not permitted without the written consent of Engineer. ANY REUSE, CHANGE OR ALTERATION BY THE CLIENT OR THIRD PARTIES IS AT THEIR OWN RISK AND CLIENT AGREES TO HOLD HARMLESS AND INDEMNIFY THE ENGINEER, ITS OFFICERS, PARTNERS, EMPLOYEES, AND SUBCONTRACTORS FROM ALL CLAIMS, DAMAGES, LOSSES, EXPENSES AND COSTS (INCLUDING ATTORNEYS' FEES), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR ENGINEER'S ALLEGED NEGLIGENCE, ARISING OUT OF OR RELATED TO SUCH AUTHORIZED OR UNAUTHORIZED REUSE, CHANGE OR ALTERATION.

5.5. **Reporting Obligations.** Client has responsibility for complying with all legal reporting obligations. Nothing in the Agreement precludes Engineer from providing any notices or reports that it may be required by law to give to governmental entities.

5.6 **Laboratory Services.** In performing services, Engineer may make use of an independent testing laboratory. Engineer will not, and Client shall not rely upon Engineer to, check the quality or accuracy of the testing laboratory's services.

5.7. **Changed Conditions.** The Client shall rely on the Engineer's judgment as to the continued adequacy of the Agreement in light of occurrences or discoveries that were not originally contemplated by or known to the Engineer. Should Engineer call for contract renegotiation, the Engineer shall identify the changed conditions necessitating renegotiation and the Engineer and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If the terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

5.8 **Site Visit.** All conclusions, opinions and recommendations will be based upon site conditions at the Property as they existed at the time of Engineer's site visit. Any report should not be relied upon to represent conditions at a later date.

5.9 **Opinions of Cost.** Should Engineer provide any cost opinions, it is understood that those opinions are based on the experience and judgment of Engineer and are merely opinions. Engineer does not warrant that actual costs will not vary from those opinions because, among other things, Engineer has no control over market conditions.

5.10 **Construction Observation.** If construction phase services are included in the Services, the Engineer shall periodically visit the Project during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The Client has not retained the Engineer to make detailed inspections or to provide exhaustive or continuous Project review and observation services. The Engineer does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Project. Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractor(s) or the safety precautions and programs incident to the work of contractor(s).

5.11 **Permits.** Client is responsible for obtaining and complying with all required permits or other approvals of, and for giving any required notices to, all governmental and quasi-governmental authorities having jurisdiction over the Services or the Property. Before Engineer performs the Services, Client will provide Engineer evidence satisfactory to Engineer that all required permits or other approvals have been obtained and that all required notices have been given. Client will provide to Engineer copies of any such permits or any such notices, together with any other relevant information that will alert Engineer to the requirements of such permits, approvals, or notifications.

ARTICLE 6: COMPENSATION OF SERVICES

6.1 **Compensation of Services.** Engineer's compensation for services shall be set forth in individual Proposal.

6.2 **Compensation.** Client agrees to pay Engineer for Services in accordance with the Agreement. Expenses directly related to these Services, including reproduction, out of town travel, long distance telephone bill, express mail, special deliveries and subcontractor expenses shall include a ten percent (10%) markup on cost.

6.3 **Payments.** Engineer will invoice Client monthly in accordance with the terms and conditions of the Proposal, and amendment(s) for Services and reimbursables. Client agrees to promptly pay Engineer at its office at **1216 Santa Maria Avenue, Laredo, Texas 78040**, the full amount of each such invoice upon receipt. In no event shall Engineer's failure to bill monthly constitute default under the terms and conditions of this Agreement.

6.4 **Sales and Use Tax.** Effective July 1, 1991, State, City and MTA Sales Tax of 8.25 % must be collected on Surveying Fees for the establishment of Real Property Boundaries and determining the location of structures or improvements in relation to the boundaries. Charges for prints and reproductions are also subject to the 8.25% Sales Tax. In the event subsequent taxes are levied by Federal, State, or Local authorities, relating to the services in writing and such modifications as are required shall be made a part of this Agreement.

6.5 **Right to Stop Performance.** If Client does not pay any amount due to Engineer within thirty (30) days after the invoice date, or within five (5) days of payment by Owner, Engineer may, upon three (3) additional days verbal or written notice to Client, stop performance of the Services until payment of the amount owed has been received.

6.6 **Attorney's Fees.** In the event Engineers' invoices for Services are given to any attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Engineer all cost of collection, including the maximum attorney's fees allowed by law and court costs, in addition to other amounts due.

ARTICLE 7: TERMINATION OF SERVICES

7.1 **Termination.** This Agreement may be terminated without cause at any time prior to completion of Engineer's services, either by Client or by Engineer, upon seven (7) days written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, the Engineer shall discontinue work under this Agreement. Such termination shall release Engineer from any further obligation to provide Services to Client on this Agreement, but all obligations of Client shall continue. In the event Client terminates the Agreement based on Client's reasonable opinion the Engineer has failed or refused to prosecute the work efficiently, promptly or with diligence, the Engineer shall have ten (10) days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of this Agreement or Proposal(s).

Client waives any and all claims it has against Engineer arising out of termination of this Agreement by Engineer. Client waives any and all claims, causes of action, or damages that it has or may have against Engineer for failure to perform further services under this or any other Agreement with Client.

7.2 **Compensation in Event of Termination.** Upon termination by either Client or Engineer, Client shall pay Engineer with respect to all contracted Services rendered and expenses incurred before termination an amount fixed by applying the Engineer's standard hourly rates, in force at the time of termination, to all Services performed to date, in addition to termination settlement costs the Engineer reasonably incurs relating to commitments which had become firm before the termination.

ARTICLE 8: RELATIONSHIP OF PARTIES

8.1 **Independent Contractor.** It is understood that the relationship of Engineer to Client shall be that of an independent contractor. Neither Engineer nor employees of Engineer shall be deemed to be employees of Client.

ARTICLE 9: LIMITATION OF LIABILITY

9.1 **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF ENGINEER, ITS EMPLOYEES, OFFICERS, SUBCONSULTANTS AND SUBCONTRACTORS, TO CLIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, OR DAMAGES WHATSOEVER FROM ANY CAUSE OR CAUSES, INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR ERRORS OR OMISSIONS SHALL NOT EXCEED THE ENGINEER'S TOTAL FEE. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED DUE TO THE FAULT OF THE OTHER PARTY, REGARDLESS OF THE NATURE OF THIS FAULT OR WHETHER IT WAS COMMITTED BY THE CLIENT OR BY ENGINEER, THEIR EMPLOYEES, AGENTS, SUBCONSULTANTS, OR SUBCONTRACTORS. CONSEQUENTIAL DAMAGES INCLUDE BUT ARE NOT LIMITED TO, LOSS OF USE AND LOSS OF PROFIT.

9.2 **No Certification.** Engineer shall not be required to sign any documents, no matter by who requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain. The Client also agrees not to make resolution of any dispute with Engineer or payments of any amount due to Engineer in any way contingent upon Engineer's signing any such certification.

9.3 **Asbestos or Hazardous Materials.** It is acknowledged by both parties that Engineer's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Engineer or any other party encounters asbestos or hazardous or toxic materials at the Property, or should it become known in any way that such materials may be present at the Property or any adjacent areas that may affect the performance of Engineer's Services, Engineer may, at its option and without liability for consequential or other damages, suspend performance of Services on the Project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials and warrant that the Property is in full compliance with applicable laws and regulations.

9.4 **Delays.** Engineer is not responsible for delays caused by factors beyond Engineer's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the

Client to furnish timely information or approve or disapprove of Engineer's Services or work product promptly, or delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond Engineer's reasonable control occur, the Client agrees Engineer is not responsible for damages, nor shall Engineer be deemed to be in default of this Agreement. In the event such delay exceeds ninety (90) days, Engineer shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation. In the event Engineer is delayed by the Client and such delay exceeds thirty (30) days, Engineer shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

9.5 **Project Enhancement.** If, due to Engineer's error or omission, any required item or component of the Project is omitted from Engineer's documents, Engineer shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event will Engineer be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

ARTICLE 10: MISCELLANEOUS

10.1 **Entire Agreement.** The Agreement contains the entire agreement between Engineer and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by written document executed by both parties.

10.2 **Modifications.** No one has authority to make variations in, or additions to, the terms of this Agreement on behalf of Engineer other than one of its officers, and then only in writing signed by him.

10.3 **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.4 **Venue.** Engineer and Client agree that the services will be performed or partially performed in Webb County, Texas, and the venue of any action under the Agreement shall be exclusively in Webb County, Texas.

10.5 **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a party hereof, and the remaining provisions shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.6 **Construction of Agreements.** The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement or any amendments or exhibits.

10.7 **Successor and Assigns.** Client, for himself and partners, if any, and Engineer, for itself, each binds himself or itself and its successors, executors, administrators and assigns to the other party to this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither Client nor Engineer shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and Engineer. Client's representative signing below warrants that he or she has full authority to bind Client to this Agreement and further warrants that Client has an ownership interest in the real property that is part of the Project. Client's representative signing below agrees to indemnify, save, and hold Engineer harmless for any and all claims, causes of action, and damages that may arise against Engineer if the representations contained in this Paragraph are not correct.

Nothing in the Agreement restricts Engineer's ability to hire subcontractor in connection with the Services. The Services and any report prepared under this Agreement are for the sole benefit and sole use of Client and are not for the use of any other person. Only Client may rely upon the Agreement and the Services, unless the Engineer gives Client prior and specific written approval.

10.8 **Dispute Resolution.** Any claim, dispute or other matter in question arising out of or related to the Agreement of the Services provided thereunder shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve all disputes by mediation. Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. No arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement. The foregoing agreement to arbitration shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

10.9 **Mediation.** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or other legal proceedings.

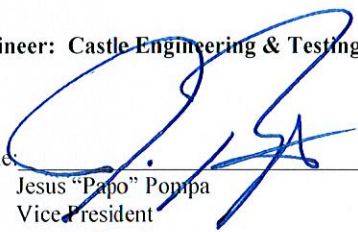
Each party agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include similar mediation provisions in all agreements with their respective subcontractors, suppliers, and subconsultants, thereby providing for mediation as the initial method for dispute resolution between the parties to all those agreements.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.10 **No Warranty.** Engineer makes no warranty, either expressed or implied, as to Engineer's findings, recommendations, drawings, specifications, or professional advice. Any warranties or guarantees contained in any purchase orders; certifications, requisitions, or notices to proceed issued by the Client are specifically objected to and excluded. Client recognizes that neither Engineer nor any of Engineer's subconsultants or subcontractors owes any fiduciary responsibility to Client.

10.11 **Survival of Provisions.** Termination of the Services for any reason whatsoever shall not affect (a) any right or obligation of any party that is accrued or vested prior to such termination, and any provision of the Agreement relating to any such right or obligation shall be deemed to survive the termination of the Services or (b) any continuing obligation, liability or responsibility of Engineer and of Client which would otherwise survive termination of the Services.

Engineer: **Castle Engineering & Testing, LLC**

Name: 
Jesus "Papo" Pompa
Vice President

Date: 10/23/2015

Client: **Webb County-Engineering Department**

Name: _____
Mr. Luis Perez-Garcia III, P.E., C.F.M.
County Engineer/Utilities Department Director

Date: _____

Proposal No. M15026