



February 14, 2022

Webb County Engineering Department
1620 Santa Ursula Drive
Laredo, Texas 78040

Attn: Mr. Luis Perez Garcia, P.E.
P: (956) 523-4054
E: lperezgarcia@webbcountytexas.gov

Re: Proposal for Materials Testing & Observation Services
ITB 2022-004 Peñitas Road Overlay
Laredo, Texas
Terracon Proposal No.: P89221006

Dear Mr. Garcia:

Terracon Consultants, Inc. is pleased to submit this estimate for the materials testing and observation services for the above-mentioned project. **We understand that we have been chosen to negotiate these services for this publicly funded project. Therefore, by providing cost information we are not in violation of the Texas Professional Services Procurement Act.** We are presenting this proposal to confirm our understanding of the services to be performed for this project and to obtain written authorization to provide these services. Our services, as we understand them and our estimated fee to perform these services are listed below.

A. PROJECT INFORMATION

Site Location

ITEM	DESCRIPTION
Location	The project is located at Peñitas Subdivision in Laredo, Texas.
Current ground cover	Existing pavement areas.
Existing topography	Relatively flat and level.

Project Description

ITEM	DESCRIPTION
Site Layout	Construction documents provided by Webb County Engineering Plans dated 11/30/2021
Construction Type	New pavement area will consist of flexible pavement system.

Terracon Consultants, Inc. 615 Gale Street, Building B Laredo, TX 78041
P [956] 729 1100 F [956] 791 1071 Texas Registration No. F-3272 www.terracon.com

B. SCOPE OF SERVICES

Our understanding of the required materials testing services for this project is based on information provided to us by Webb County Engineering Plans dated 11/30/2021.

We anticipate providing the requested materials observation and testing services for this project on an “as requested” basis for most of the construction. The services estimated for this project are listed below, followed by the specific scope of services for each service type:

Asphaltic Concrete Testing: An engineering technician will retrieve samples of asphaltic concrete from the project site and return to our laboratory for testing. Our laboratory testing on the asphaltic concrete will include asphalt content determination, gradation and extraction analysis, rice and bulk specific gravity determination. Field services will include taking cores for thickness verification only. No field density testing will be performed.

Project Management: The project manager will be the point of contact for the project and his duties include as related materials testing and observation services the following:

- a) Coordinate field and laboratory testing;
- b) Communicate with Terracon field technicians, Contractor, and Owner’s site representative;
- c) Review laboratory and field test reports;
- d) Control our budget and invoice;
- e) Provide technical assistance.

Scheduling: It is the responsibility of the contractor or designated representative to notify Terracon, in advance (minimum of 24-hour notice), for testing services required on this project. Our services will be performed on an as requested basis. Terracon will not be responsible for scheduling our services and will not be responsible for tests that are not performed due to failure to schedule our services on the project. Scheduling for your convenience is handled by our dispatcher 956.729.1100.

C. COMPENSATION

We estimate the cost of our services to be **\$2,845.00**, see **Exhibit A** for details. Please recognize that **this is an estimate** because **Terracon has no control over GC’s “Means, Methods nor Schedule”**. **Estimate does not include OT**. We will only invoice for the actual services and required laboratory tests. In the event the construction activities do not require the time we have estimated, the cost should be lower than our estimated cost. If more services are required due to conditions such as scheduling, inclement weather, or retesting, this cost estimate may be exceeded, but in no case will our services exceed our estimated amount without your written approval.

Proposal for Material Testing & Observation Services

ITB 2022-006 Peñitas Road Overlay ■ Laredo, Texas

February 14, 2022 ■ Terracon Proposal No.: P89221005



The applicable field rate will be invoiced for all hours worked, including travel time, report and sample preparation. Technician time will be invoiced on a portal-to-portal basis from our office. **Overtime rates of 1.5 times the regular hourly rates will be charged for time worked outside normal workday hours of 8:00 am to 5:00 pm and over 8 hours per day, Monday through Friday. Hours worked on Sunday or holidays will be invoiced at the rate of 2 times the regular hourly rates.** A minimum of 4-test / trip will be invoiced per visit to the project site.

D. D. AUTHORIZATION

If this Scope of Services meets with your approval, project initiation may be expedited by emailing Ray.Hernandez@terracon.com or faxing a copy of the signed Agreement for Services and your Purchase Order to (956) 791 1071. Unless requested otherwise, a hard copy of this proposal will not be mailed to you.

The terms, conditions and limitations stated in the Agreement for Services (and sections of this proposal incorporated therein), shall constitute the exclusive terms and conditions and services to be performed for this project. This proposal is valid only if authorized within 90 days from the proposal date.

We appreciate your consideration of Terracon for this project, and we look forward to the opportunity of working with you. If you have any questions regarding this proposal, please feel free to contact us.

Very truly yours,
Terracon Consultants, Inc.

Raymundo Hernandez
Project Manager
Materials Division

Juan Carlos Rendon, M.S.
Office Manager

Attachments: Exhibit A, Estimated Fees
Agreements for Services

EXHIBIT A

**ITB 2022-004 Peñitas Overlay
Terracon Project P89221006**

Asphaltic Concrete Testing			
Item	Units	Unit Cost	Estimated Total
Asphaltic concrete batch, test	3	\$ 575.00	\$ 1,725.00
Asphaltic concrete core, per core Note: Thickness verification only. Minimum 4 cores/ trip	4	\$ 150.00	\$ 600.00
Subtotal			\$ 2,325.00
Project Management			
Item	Units	Unit Cost	Estimated Total
Project Manager, per hour	4	\$ 130.00	\$ 520.00
Subtotal			\$ 520.00
Total Budget Estimate			\$ 2,845.00


AGREEMENT FOR SERVICES

This **AGREEMENT** is between Webb County Engineering Dept ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the ITB 2022-004 Peñitas Road Overlay project ("Project"), as described in Consultant's Proposal dated 02/14/2022 ("Proposal"), including but not limited to the Project Information section, unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Proposal, including but not limited to the Scope of Services section ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. When Consultant subcontracts to other individuals or companies, then consultant will collect from Client on the Subcontractors' behalf. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the Project.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Proposal, including but not limited to the Compensation section, unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties other than those who have executed Consultant's reliance agreement, subject to the prior approval of Consultant and Client.
- 6. LIMITATION OF LIABILITY. CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$10,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. PRIOR TO ACCEPTANCE OF THIS AGREEMENT AND UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION IN THE FORM OF A SURCHARGE TO BE ADDED TO THE AMOUNT STATED IN THE COMPENSATION SECTION OF THE PROPOSAL. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S), OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.**
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's Services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of Services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. **EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$2,000,000 occ / \$4,000,000 agg); (iii) automobile liability insurance (\$2,000,000 B.I. and P.D. combined single

limit); and (iv) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

- 10. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.**
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client shall cause all tests and inspections of the site, materials, and Services performed by Consultant to be timely and properly scheduled in order for the Services to be performed in accordance with the plans, specifications, contract documents, and Consultant's recommendations. No claims for loss or damage or injury shall be brought against Consultant by Client or any third party unless all tests and inspections have been so performed and Consultant's recommendations have been followed. Unless otherwise stated in the Proposal, Client assumes sole responsibility for determining whether the quantity and the nature of Services ordered by Client is adequate and sufficient for Client's intended purpose. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by Services not performed due to a failure to request or schedule Consultant's Services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods. The extension of unit prices with quantities to establish a total estimated cost does not guarantee a maximum cost to complete the Services. The quantities, when given, are estimates based on contract documents and schedules made available at the time of the Proposal. Since schedule, performance, production, and charges are directed and/or controlled by others, any quantity extensions must be considered as estimated and not a guarantee of maximum cost.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of the testing procedures (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Materials unless specifically provided in the Services, and that Client is responsible for directing such disposition. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site and Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's performance of Services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Unless otherwise stated in the Proposal, Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site. In addition, Consultant retains the right to stop work without penalty at any time Consultant believes it is in the best interests of Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to the coronavirus. Client agrees it will respond quickly to all requests for information made by Consultant related to Consultant's pre-task planning and risk assessment processes. Client acknowledges its responsibility for notifying Consultant of any circumstances that present a risk of exposure to the coronavirus or individuals who have tested positive for COVID-19 or are self-quarantining due to exhibiting symptoms associated with the coronavirus.

Consultant: **Terracon Consultants, Inc.**
By:  Date: **2/15/2022**
Name/Title: **Juan Carlos Rendon Prado / Office Manager I**
Address: **615 Gale St, Bldg B Ste B**
Laredo, TX 78041
Phone: **(956) 729-1100** Fax: **(956) 791-1071**
Email: **Juan.Rendon@terracon.com**

Client: **Webb County Engineering Dept**
By: _____ Date: _____
Name/Title: **Luis Perez Garcia, P.E. /**
Address: **1620 Santa Ursula Ave**
Laredo, TX 78040-3801
Phone: **(956) 523-4054** Fax: _____
Email: **lperezgarcia@webbcountytx.gov**