


**PROFESSIONAL SERVICES CONTRACT
WEBB COUNTY AND TERRACON CONSULTANTS, INC.
WEBB COUNTY R.F.Q. 2020-003 GEO-TECH TESTING SERVICES
WEBB COUNTY ROAD PROJECTS**

MARGIE R. IBARRA
COUNTY CLERK
FILED

2020 MAY 18 PM 4:41

WEBB COUNTY, TEXAS

BY  DEPUTY

WHEREAS at a Webb County Commissioner's Court Meeting held on the 11th day of May, 2020, the Webb County Commissioner's Court approved and awarded a Professional Services Contract to provide the Webb County with geo-technical related services, as needed for the Webb County Wormser Rd. Construction Project to **Terracon Consultants, Inc.**

NOW, THEREFORE, IT IS AGREED by, and between the parties hereto the County of Webb, acting by and through its Commissioner's Court, hereinafter referred to as "County" and **Terracon Consultants, Inc.**, hereinafter referred to as "Independent Contractor" shall provide "County" with the service proposal as more particularly described and attached herein as Exhibit A "Terracon GEO-TECH Engineering Services Proposal".

Effective Date and Term and Termination Date of Professional Services Contract:

The effective date of this Agreement is May 11, 2020 but shall not officially commence until delivery and acknowledged receipt of a written and signed notice to proceed issued by Webb County to **Terracon Consultants, Inc.** The term for the completion of the scope of services for this project shall be **Thirty (30)** calendar days from date set forth in the Official Webb County Notice to Proceed, and shall terminate upon completion of all scope of work/job tasks.

1. Independent Contractor

It is hereby covenanted and agreed by the parties that the services to be provided to "County" by the Independent Contractor and/or Professional shall incorporate the scope of work and requirements as set forth and attached hereto as Exhibit "A" "Webb County Wormser Rd./Geo-Technical Engineering Services Proposal", and incorporated by reference for all intents and purposes. Independent Contractor/Professional shall perform the services as listed under Exhibit A "Engineering Services Proposal" (attached hereto).

2. Compensation

The County of Webb shall pay the Independent Contractor a total lump sum in the amount of EIGHTEEN THOUSAND FOUR HUNDRED FIFTY AND NO/100 DOLLARS (\$18,450.00) for goods/services provided pursuant to this agreement which have been authorized by an Official Purchase Order signed by the Webb County Purchasing Agent. The County Auditor will only authorize payment for the goods/services described on the Official Purchase Order unless otherwise permitted by law or the Webb County Purchasing Policy. Further, compensation for unauthorized change orders will not be paid by Webb County. Only change orders authorized by the Purchasing Agent through an Official Purchase Order will be paid once all goods are received and/or services completed. No other County Official, employee, officer or Elected Official is authorized to approve purchases and/or changes to purchase orders unless approved by the Webb County Purchasing Agent.

3. Billing Address

All invoices must be submitted to the Webb County Business Office in BOTH electronic format and mail and/or hand delivery to the following address:

Webb County
1110 Washington Street, Ste. 203
Laredo, Texas 78040
Attn: Business Office

Or email to: apinvoices@webbcountytexas.gov

ALL invoices must reference Purchase Order #

4. Independent Contractor

In the performance of work, duties, and obligations required of the Independent Contractor whether one or more, under this Agreement, it is mutually understood, and agreed, that Independent Contractor is, at all times, acting and performing as an independent Contractor. Webb County's sole interest is to assure that the Independent Contractor services be performed and rendered in a competent, efficient, and satisfactory manner. The Independent Contractor hereby agrees to perform the services in strict accordance with approved methods, and practices, in the general field of his expertise.

5. Ethical Standards

The Independent Contractor/Bidder warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Independent Contractor/Bidder for the purpose of securing business. For breach or violation of this warranty, the County shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

6. No Conflicts

Independent contractor represents and warrants that contractor has no actual or potential conflicts of interest in providing services to County under this contract and the contractor's provision of services under this contract would not reasonably create an appearance of impropriety.

7. Additional Services and Expenses

Any and all additional services, parts, costs, fees or expenses, not included in this agreement, shall require both a written request by the Independent Contractor to the County and prior formal approval by a quorum of the Webb County Commissioner's Court at either a regular, special and/or emergency called meeting of the "County". The County shall not be responsible for and/or shall not compensate the Independent Contractor for these costs without both a written request and prior approval by the County.

8. Terms and Conditions

The Independent Contractor certifies, and affirms, that he/she/company is not legally, or professionally, disqualified from the performance of the duties under this Agreement. Independent Contractor shall advise the County, in writing, of any change in status of the Independent Contractor which may materially affect the ability of Independent Contractor to legally, or professionally, carry out the duties herein.

9. Access to Criminal History Record and Termination of Contract or Disqualification of Bid for Cause

Please be advised that Webb County is entitled to obtain the criminal history information of any person and/or business owner who contracts with the County in accordance with Section 411.1295 of the Texas Government Code. In the event that any criminal history of a person or business owner who contracts with Webb County is discovered, then at that event, Webb County at its sole discretion reserves the exclusive right and shall be entitled to immediate termination of the contract and/or immediate disqualification of bid submittal in the event that such criminal history is discovered, by providing notice to the person and/or business owner of such termination and/or disqualification of bid submittal in accordance with the Notice provisions set forth in Section 13 herein-below.

10. Termination for Convenience

Termination for convenience, also known as a no-fault termination, allows the County to terminate any contract, in whole or in part, at any time in its sole discretion, if it is determined that the termination is in the best interest of the County. As notified by the Purchasing Agent through a 15 day written notice / via email of such intent to terminate contract for convenience.

Purchasing provides the Independent Contractor a written notice specifying the extent of termination and the effective date, providing as much notice as possible. The Independent Contractor is generally paid for allowable costs incurred up to the effective date of termination. The County is not liable for payment to the Independent Contractor related to the terminated portion of the work or any work performed or costs incurred after the effective date of the termination.

11. Termination for Default

A contract may be terminated for default when (a) the County concludes that the Independent Contractor fails to perform, make progress, or in any way breaches the contract and continues to do so after receiving written notice/email notice of such default/issues and fails to cure such default/issues within 10 working days (b) Termination for default should be used as the last resort. The County should do everything practicable to assist the Independent Contractor in curing a default. Factors to consider before making a decision to terminate for default include: (1) The provisions of the contract and applicable regulations, (2) The specific contractual failure(s) and the explanation provided for the failures, (3) The urgency of the need for the contracted supplies or services, (4) Actions the County may have taken that aggravated the problems, (4) The availability of the supplies or services from other sources and the time required to obtain them, and (5) Availability of funds or resources to re-purchase if the costs cannot be recovered from the defaulting Independent Contractor.

12. Notices

All notices called for, or contemplated, hereunder shall be in writing, and shall be deemed to have been duly given, when personally delivered and/or via e-mail, or seventy-two (72) hours after mailed to each party by certified mail, return receipt requested, postage prepaid.

Any notices required to be sent hereunder shall be sent as follows:

TO: Terracon Consultants, Inc. c/o
Arturo Barrera, P.E./Off. Mgr.
615 Gale St.
Laredo, Texas 78041
(956) 724-3097
E-Mail: art.barrera@terracon.com

TO: Jose Angel Lopez III, CTPM
Webb County Purchasing Agent
1110 Washington Street, Ste. 101
Laredo, Texas 78040
(956) 534-4125
E-Mail: joel@webbcountytx.gov

WEBB COUNTY, TEXAS
Luis Perez-Garcia, P.E./Webb County Engineer
Webb County Engineering Dept.
(956) 523-4054
lperezgarcia@webbcountytx.gov

13. Severability

Each paragraph, and provision, hereof is severable from the entire Agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

14. Prohibitions against Assignment.

No assignment or transfer of this Agreement can be made without written consent of both parties, hereto.

15. Hold Harmless

The independent contractor shall indemnify and hold Webb County harmless from all claims for personal injury, death and/or property damage to the extent resulting from independent contractor's negligent performance. Independent contractor shall procure and maintain, with respect to the subject matter of this ITB, appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover Bidder's liability as may arise directly or indirectly from work performed and goods or services sold and under the terms of this ITB. Certification of such coverage must be provided to the County upon request.

16. Venue/Laws of Texas

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, and the exclusive venue for any and all legal disputes between the parties shall be enforced and shall lie in the Webb County, Texas.

17. Entire Agreement

This Agreement incorporates all the agreements, covenants, and understandings between the parties herein concerning the subject matter hereof; and all such covenants, agreements, and understandings have been merged into this written Agreement. No other prior agreement, or

understandings, verbal or otherwise, of the parties, or their agents, shall be valid, or enforceable, unless signed by both parties, and attached hereto, and/or embodied herein.

18. Amendment

This Agreement may be modified, only in writing, executed by both parties, and approved by a majority of a quorum of the Webb County Commissioner's Court.

19. Confidentiality

Any confidential information provided to, or developed by, Independent Contractor in the performance of the Agreement shall be kept confidential, unless otherwise provided by law, and shall not be made available to any individual, or organization without the prior approval of COUNTY. All work products, whether in draft or final form is the sole property of Webb County and may not be used by INDEPENDENT CONTRACTOR for any purpose without written consent of COUNTY.

20. Headings

The headings used herein are for convenience only, and shall not constitute a part hereof, or affect the construction or interpretation hereof.

21. Counterparts


This Agreement may be executed in any number or, and by, the different parties hereto on separate counterparts, each of which when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute but one and the same document.

22. Terminology and Definitions

All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural, and the plural shall include the singular.

EXECUTED in duplicate originals this ____ day of MAY, 2020.

WEBB COUNTY, TEXAS



TANO E. TIJERINA

Webb County Judge

Dated: May __, 2020

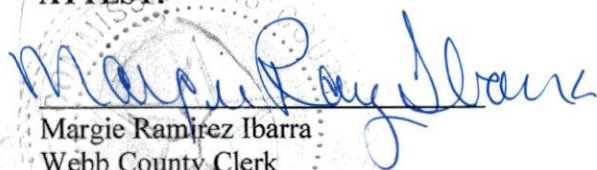
TERRACON CONSULTANTS, INC.

By: 

Arturo Barrera, P.E./Off. Mgr.

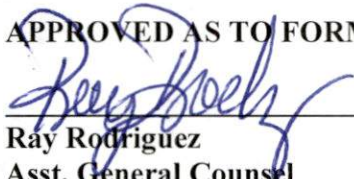
Date: May 18, 2020


ATTEST:



Margie Ramirez Ibarra
Webb County Clerk

APPROVED AS TO FORM:



Ray Rodriguez

Asst. General Counsel

Webb County Civil Legal Division*

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

*Passed and Approved at the Webb County
Commissioner's Court meeting held on the 11th
day of May, 2020, Item No. 7(b)*

EXHIBIT - A



April 29, 2010

Webb County Engineering Dept.
1620 Santa Ursula Ave.
Laredo TX 78040

Attn: Mr. Luis Perez-Garcia, P.E.
P: (956) 523-4055
M: (956) 635-9611
E: lperezgarcia@webbcountytx.gov

Re: Proposal for Geotechnical Engineering Services
Wormser Rd Realignment
Laredo, Texas
Terracon Proposal No.: P89205013

Dear Mr. Perez-Garcia

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this Proposal to provide Geotechnical Engineering Services for proposed Wormser Rd Realignment project. **We understand that we have been chosen to provide these services for these publicly funded projects. Therefore, by providing cost information we are in accordance with the Texas Professional Services Procurement Act.** The purpose of the study is to evaluate the pertinent geotechnical conditions of the proposed roadway and to develop geotechnical parameters, which will assist in the design of the proposed road. This proposal outlines our understanding of the project and scope of services and provides an estimated fee for our services.

PROJECT INFORMATION

Site Location

ITEM	DESCRIPTION
Location	Proposed realignment of existing Wormser Rd as indicated on Exhibit A in Laredo, Texas
Existing Improvements	Mostly undeveloped Land. Boring locations are heavily vegetated. Limited tree and shrub clearing may be required to access the borings.
Current Ground Cover	Roadway alignment's ground covers are bare soil, typical South Texas grass, brush and mesquite trees.

Terracon Consultants, Inc. 615 Gale Street, Building B Laredo, TX 78041
P [956] 729 1100 F [956] 791 1071 Firm No. TX F3272 terracon.com

Geotechnica

Environmenta

Construction Materials

Facilities

Project Description

ITEM	DESCRIPTION
Pavements	Both flexible and concrete pavement sections will be considered.
Construction Type	New road construction to include raised medians, curb & gutters and sidewalks.
Grading	Proposed grading was not available at the time of this proposal.
Traffic Load	The roadway will be designed for a 40-year design life. Traffic load will be provided to us by the client in order to design the roadway.

Should any of the above information or assumptions be inconsistent with the planned construction, please let us know so that we may make any necessary modifications to this proposal.

B. SCOPE OF SERVICES

Based on the request from the client and our experience with the project site and proposed development, the following boring field exploration is planned:

Structure	Quantity	Depth, feet
Along Road Alignment	20	10 FT

The drilling depths will be based on topographic conditions at the time of our drilling operations. The number of borings/depth and location maybe adjusted depending on the subsurface conditions. **Prior to drilling operations, we recommend that the borings be staked by Sherfey Engineering or survey crew prior to our drilling operation.**

Drilling and sampling will generally be performed in accordance with applicable standards of the American Society for Testing and Materials (ASTM). Thin-walled tube samples (ASTM D 1587) will generally be obtained when clayey (cohesive) soils are encountered. If granular (cohesionless) soils such as sands, gravels, and silts are present during drilling, thin-walled tube samples cannot be recovered; split-barrel samples (ASTM D 1586) will be obtained.

Conditions/Items to be provided by Client – Items to be provided by the client include the right of entry to conduct the exploration and an awareness and/or location of any private subsurface utilities existing in the area. **We will contact Texas811 for location of utilities in public easements. Location of private lines on the property is not part of the Texas811 or Terracon scope.** All private lines should be marked by others prior to commencement of drilling.

Terracon will take reasonable efforts to reduce damage to the property. However, it should also be understood that in the normal course of our work some such disturbance could occur. We have not budgeted to restore the site beyond backfilling the boreholes. If there are any restrictions or specific requirements regarding this site or exploration, these should be known prior to commencing field work.

The drilling services for this project will be performed by a drilling subcontractor under Terracon's

direction. Our fee is based on the site being accessible to our conventional two-wheel drive truck-mounted drilling equipment. Additional costs may result if this is not the case. It does not include services associated with location of underground utilities beyond contacting TESS. If such conditions are known to exist on the site, Terracon should be notified so that we may adjust our scope of services and fee, if necessary.

For safety purposes, all borings will be backfilled immediately after their completion. Excess auger cuttings would be disposed of on the site. Because backfill material often settles below the surface after a period of time, we recommend the boreholes be checked periodically and backfilled if necessary. We could provide this service at your request or grout the holes, but this would involve additional cost.

Site Clearing: Clearing may be required for accessing few boring locations. Terracon can assist with tree clearing permit and tree clearing services to make paths for drill rig access. Typical turnaround time for these services is about 10 days. Terracon will hire a sub-contractor to do the tree clearing. Cost for limited tree clearing around the proposed boring locations is shown in a line item in the compensation section. The cost for tree clearing does not include any permit fees. If permit is required, client will need to obtain the permit.

Laboratory Testing – The samples will be tested in our laboratory to determine physical engineering characteristics. Testing will be performed under the direction of a geotechnical engineer and will include classification, moisture content, Atterberg limits, and sulfate concentration (colorimetric method) as appropriate. All laboratory tests will be performed in accordance with applicable ASTM standards.

In addition to the routine classification and index property tests, we will perform a laboratory moisture-density relationship (ASTM D 698) on bulk samples that are representative of the proposed pavement subgrade for the natural soil. The CBR test result will be provided for use in the design of the pavement system.

Engineering Analysis and Report – The results of our field and laboratory programs will be evaluated by a professional geotechnical engineer licensed in the State of Texas. Based on the results of our evaluation, an engineering report will be prepared that details the results of the testing performed, provides logs of the borings, and a diagram of the site/boring layout. The report will include the following:

- Computer generated boring logs with soil stratification based on soil classification.
- Summarized laboratory data.
- Groundwater levels if observed during and after completion of drilling.
- Boring location plan.
- Subsurface exploration procedures.
- Encountered soils conditions.
- Earthwork consideration
- Asphalt and Concrete Pavement Thickness Recommendations for the proposed roadway based on client provided traffic loading.

Schedule – We can generally begin the field exploration program 5 to 7 days following authorization to proceed, site and weather conditions permitting. The field operations are expected to take about 2 days to complete. We estimate that the geotechnical engineering report can be completed within 4 weeks after the soil borings are completed. In situations where information is needed prior to submittal of our report, we can provide verbal information or recommendations for specific project requirements after we have completed our field and laboratory programs.

C. COMPENSATION

For the scope of services outlined in this Revised Proposal the estimated fees follow. A detailed cost breakdown of the estimated fee is attached at the end of the proposal.

Description	Estimated Fee
Subsurface Exploration, Laboratory Testing, Geotechnical Consulting & Reporting	\$14,950.00
Drilling Rig Access Clearing Backhoe will be invoiced at cost + 15%	\$3,500.00

Additional drilling footage will be billed at a rate of \$75.00 per foot, which includes drilling, sampling, general laboratory testing, computer logs, and engineering. If we are authorized to proceed and the client subsequently postpones or cancels the work, we will invoice the client for the costs of project set up and mobilization incurred prior to notice of cancellation.

Should it be necessary to expand our services beyond those outlined in this proposal, we will notify you, then send a supplemental proposal stating the additional services and fee. We will not proceed without your authorization, as evidenced by your signature on the Supplement Agreement form.

We are available to review related portions of project drawings and specifications and to confer with the design team after submittal of our reports. Such follow-up services are beyond the scope of this proposal and would be charged at \$150.00 per hour for a Project Manager and \$215.00 per hour for a Principal Engineer. We will obtain your specific authorization prior to providing any additional services.

D. AUTHORIZATION

The proposed Scope of Services may be authorized by signing attached Agreement for Services. Unless requested otherwise, a hard copy of this proposal will not be mailed to you.

Revised Proposal for Geotechnical Engineering Services

Wormser Rd Realignment ■ Laredo, Texas

April 29, 2020 ■ Terracon Proposal No. P89205013



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.

Sincerely,

Terracon Consultants, Inc.

(Firm Registration: TX F3272)

A handwritten signature in blue ink that reads "Arturo Barrera". The signature is fluid and cursive.

Arturo Barrera, P.E., PMP
Office Manager

A handwritten signature in blue ink that reads "Mike T. Ghazawi". The signature is fluid and cursive. To the left of the signature, the word "FOR" is written in blue ink.

FOR Mike T. Ghazawi, P.E.
Senior Principal

Attachments:

1. Agreement for Services
2. Exhibit A Proposed Wormser Rd. Realignment

Cc: Nathan Bratton
Ray Rodriguez

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 Wormser Rd Realignment project ("Project"), as described in Consultant's Proposal dated 04/29/2020 ("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 \$50,000 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 (\$1,000,000 occ / \$2,000,000 agg); (iii) automobile liability insurance (\$1,000,000 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: Arturo Barrera Date: 4/29/2020
Name/Title: **Arturo R Barrera / Office Manager I**
Address: **615 Gale St, Bldg B Ste B**
Laredo, TX 78041
Phone: **(956) 729-1100** Fax: **(956) 791-1071**
Email: **Art.Barrera@terracon.com**

Client: **Webb County Engineering Dept**
By: _____ Date: _____
Name/Title: **Luis Perez Garcia, P.E. / County Engineer**
Address: **1620 Santa Ursula Ave**
Laredo, TX 78040-3801
Phone: **(956) 523-4055** Fax: _____
Email: **lperezgarcia@webbcountytx.gov**

