



AGREEMENT WITH TERRACON

(version 2-23-2024)

This AGREEMENT ("Agreement") is entered by and between Terracon ("Contractor"), located at 551 League City Parkway, Suite F, League City TX 77573 and City of League City ("City"), a municipal corporation, located at 300 W. Walker, League City, Texas 77573 on the date set forth below.

Terms:

- 1. Scope of Services:** Contractor will perform the designated services and/or provided the designated products, as set forth in Exhibit A, which is attached and incorporated herein, and which can be generally described as **Engineering Services**. If there is a conflict between the terms of this Agreement and Exhibit A, the terms of this Agreement will prevail.
- 2. Term and Termination:** This Agreement shall begin on **March 26, 2024** and shall terminate on **July 26, 2024**. This City reserves the right to terminate this Agreement for convenience upon seven (7) days-notice to the Contractor. Upon such termination, the City shall pay Contractor, at the rate set out in Exhibit A, for services satisfactorily performed or products satisfactorily provided up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, the City will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor. This Agreement is eligible for **NA** renewal option(s) with a term of **NA** year.
- 3. Compensation:** Contractor shall be paid for the services, as set forth in Exhibit A, attached and incorporated for all purposes. In no event shall the total compensation exceed **\$75,005.00** during the term of this Agreement, subject to mutually agreed change orders. The City shall pay Contractor in accordance with the Texas Government Code 2251. Contractor must submit invoices for all services, which invoices must include dates of service and details of services provided. Payment for delivery of services rendered shall not be unreasonably withheld or delayed. If the City disapproves any amount submitted for payment by Contractor, the City shall give Contractor specific reasons for disapproval in writing. Upon resolution of any disputed charges, Contractor shall submit an amended invoice covering any remaining charges to the City.
- 4. Insurance:** The Contractor is required to maintain insurance through the term of this Agreement.

If required by the City, Contractor shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence or medical malpractice insurance (whichever applies) throughout the entire term of the Agreement. If at any point during the Agreement, Contractor will enter City property, Contractor shall also maintain the following insurance: (i) Worker's Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of \$2,000,000 per claim; and (iv) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Contractor shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Contractor shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of the City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City of League City employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by the City for such expenses except as otherwise provided in this Agreement.
6. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work for hire under federal copyright law. Ownership of the work shall belong to and remain the exclusive property of the City. The work may be edited at any time within the City's discretion. If the work would not be considered a work-for-hire under applicable law, Contractor hereby assigns, transfers, and conveys any and all rights, title and interest to City of League City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the work, the City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within the City's discretion. Contractor shall not sell, disclose or obtain any other compensation for the services provided herein. If the work is one to which the provisions of 17 U.S.C. § 106A apply, the Contractor hereby waives and appoints the City to assert on the Contractor's behalf the Contractor's moral rights or any equivalent rights regarding the form or extent of any alteration to the work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for the City's purposes.
7. **Confidentiality:** During the course of the work and/or services to be provided under this Agreement, Contractor may come in contact with confidential information of the City. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by the City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify the City of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Agreement shall return to the City all confidential information in Contractor's possession or control. Contractor shall further comply with all information security policies of the City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Contractor without the prior written approval of the City; provided however, that Contractor may retain one (1) copy of all work produced with incorporated confidential information for internal record-keeping purposes, subject to the terms of this Agreement.
8. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform the Services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any Service performed on premises owned or controlled by the City, Contractor warrants and agrees that Contractor will perform the Services in compliance with all City Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
9. **Licenses/Certifications:** Contractor represents and warrants that it will obtain and maintain in effect, and pay the cost of all licenses, permits or certifications that may be necessary for Contractor's performance of this Agreement. If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contractor.
10. **Performance/Qualifications:** Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under

this Agreement. Contractor warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.

11. **Conflict of Interest:** Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the Services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and the City that could be construed as a conflict of interest with regard to this Agreement.

12. INDEMNIFICATION: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, AND EACH OF ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.

13. **Force Majeure:** Neither the City nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

14. **Notices:** Any notice given under this contract by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice shall be deemed communicated three (3) days after mailing.

15. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.

16. **State Auditor:** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

17. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.

18. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for

in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by the City and the Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Director of Finance of the City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, (ii) neither the issuance of this Contract by the City nor any other conduct, action or inaction of any representative of the City relating to this contract constitutes or is intended to constitute a waiver of the City's or the state's sovereign immunity to suit; and (iii) the City has not waived its right to seek redress in the courts.

19. **Entire Agreement:** This Agreement contains the entire Agreement between the parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the parties executed subsequent to this Agreement.
20. **Eligibility to Receive Payment:** Contractor certifies that, as a matter of State law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
21. **Payment of Debt/Delinquency to State:** Contractor certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
22. **Products and Materials Produced in Texas:** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
23. **Risk of Loss:** If applicable, all work performed by Contractor pursuant to the Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, such loss or damage will be Contractor's responsibility.
24. **Publicity:** Contractor shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
25. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this contract are declared to be severable. The Parties may mutually agree to renegotiate the contract to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
26. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.

27. **Sovereign Immunity:** Except as otherwise provided by Texas law, neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement is a waiver of sovereign immunity by City.
28. **Authority:** Contractor warrants and represents that Contractor has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of the City represents that he/she has authority to sign this Agreement on behalf of City.
29. **Non-Waiver:** No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
30. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002, Texas Government Code, by executing this Agreement Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
31. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

Executed on this ____ day of _____, _____. *(date to be filled in by City Secretary)*

TERRACON CONSULTANTS, INC - "Contractor"



 Noosha P. Smith, P.E.

CITY OF LEAGUE CITY - "City"

 John Baumgartner, City Manager

Attest:

 Diana Stapp, City Secretary

Approved as to Form:

 Office of the City Attorney

Exhibit A

Scope of Services/Description of Products (6 number of pages, including this page)

Professional services for testing DR2004 Bay Ridge Flood Reduction – Ph 1

- Earthwork, Utility Backfill, Concrete Pavement, and Miscellaneous Structures
- Laboratory
- Project Management/Administration Svices



551 W League City Parkway, Suite F
League City, Texas 77573

P (281) 557-2900

Terracon.com

January 23, 2024

City of League City
300 W. Walker Street
League City, Texas 77573

Attn: Mr. James Doyle, M.Div., CPM
Senior Project Manager
E: James.Doyle@leaguecitytx.gov

Re: **Proposal for Construction Materials Testing Services**
Bay Ridge Drive Flood Reduction – Phase 1A
Bay Ridge Drive: between League City Parkway and White Sail Drive
League City, Texas
Terracon Proposal No. P91231090 Rev. 1

Dear Mr. Doyle,

It is our understanding that Terracon Consultants, Inc. (Terracon) has been selected by the City of League City based solely on our qualifications to provide materials testing services for the above referenced project. In this proposal we have presented our understanding of the scope of the project, our proposed services, and our cost estimate.

1.0 PROJECT INFORMATION

This project consists of roadway reconstruction of approximately 450 linear feet of Bay Ridge Drive between League City Parkway and White Sail Drive in League City Texas. The elevation of the proposed roadway section is planned to be raised up to about 5 feet above existing pavement grade and will incorporate concrete cast-in-place retaining walls along both sides of the roadway to facilitate the grade change. The new pavement is planned to consist of at least 9 inches of concrete underlain by about 8 inches of lime treated subgrade. Other improvements will include utility and sidewalk modifications.

Terracon was provided with the following construction documents for preparation of this proposal:

- Project civil drawings prepared by LJA Engineering, Inc., dated June 2022.
- Project specifications for Bay Ridge Flood Reduction – Phase I.
- Geotechnical report No. 91215087 prepared by Terracon, dated February 28, 2022.

Explore with us

2.0 SCOPE OF SERVICES

Terracon proposes to provide the following services when scheduled by the contractor or the City's representative.

2.1 Earthwork

- Sample imported fill soils, utility backfill, subgrade, and chemically treated subgrade soils. Prepare and test the samples for Atterberg limits and moisture-density relationship.
- Sample cement stabilized sand for utility backfill, prepare test specimens, and test samples for moisture-density relationship and compressive strength.
- Observe proofrolling operations of the pavement subgrade.
- Evaluate the pavement subgrade soils for chemical treatment.
- Observe the chemical treatment process for the pavement subgrade.
- Perform field gradation tests on treated subgrade.
- Perform field density tests of the imported fill soils, utility backfill when proper trench safety is provided by contractor, subgrade, and chemically treated pavement subgrade using the nuclear method to determine the moisture content and percent compaction of the soil materials.

2.2 Cast-in-Place Concrete

- Observe reinforcing steel prior to concrete placement. We will observe the rebar size, spacing, and configuration. Terracon recommends we be scheduled a minimum of 24 hours prior to concrete placement.
- Sample the fresh concrete and perform tests for slump, air content, and concrete temperature only; and cast test specimens during placement. Terracon understands that the contractor will be responsible for maintaining the initial curing temperature of the concrete test specimens. Terracon will record the initial curing temperatures only when curing boxes are provided by the contractor.
- Within 48 hours of concrete placement, travel to project site to collect and transport hardened concrete test cylinders to Terracon's League City laboratory for curing and testing.
- Perform compressive tests of concrete test cylinders cast in the field.

Terracon requests copies of the approved concrete mix designs.

2.3 Project Management

- Attend construction meetings, if requested.
- Coordinate field and laboratory testing.
- Communicate with Terracon field technicians, contractor, and owner's site representative.
- Review laboratory and field test reports.

- Monitor our budget and invoice.

2.4 Additional Services

If work beyond the scope of services listed above is requested, Terracon will issue a supplement to the Agreement, or supplemental proposal, that outlines the additional work to be performed and associated fees. To authorize us to begin work, you simply return a signed copy of the supplemental Agreement.

3.0 SCHEDULING SERVICES

Field testing services will be provided on an “call-out” basis when scheduled by the contractor or client’s representative. A minimum of 24 hours’ notice is required to properly schedule our services. To schedule our services please contact our dispatcher at (281) 557-2900. The dispatch office hours are from 7:00 a.m. to 5:00 p.m. Messages left after business hours will be checked the following business day.

4.0 REPORTING

Results of field tests will be reported verbally to available personnel at the site. Written reports of field tests and observations will be distributed within five business days. Test reports will be distributed via e-mail. **Please provide Terracon with a distribution list prior to the beginning of the project.** The list will need to include the company name, address, contact person name, phone number, and e-mail address for each person.

Terracon will only provide testing when called by the contractor or your representative. The extent of our observations and documentation will be limited to the items observed during the site visits. It is the responsibility of the contractor’s representative to schedule retests in a similar manner to scheduling our original services. Terracon shall not be held responsible for tests not performed because of a failure to schedule our services or any subsequent damage caused due to a lack of testing.

5.0 COMPENSATION

Our estimated total budget to perform materials testing services is **\$75,005.00**. **Please note that this is only a budget estimate and not a not-to-exceed price.** Fees for our services provided will be based on the unit rates shown in the cost estimate table attached. Many factors beyond our control, such as weather and the contractor’s schedule, will dictate the final fee for our services. Labor, equipment, and transportation charges are billed on a portal-to-portal basis from our office. **Quantities for re-tests, cancellations and stand-by time are not included in our fees and will be tracked separately for the client.** If needed, a Change Order for these additional services will be submitted to the client.

Note 1 – Overtime is defined as hours worked more than 8 per day, and all hours worked on weekends and holidays. Overtime rates will be 1.5 times the hourly rate quoted.

Note 2 – **A 4-hour minimum charge will be applied to site visits other than sample or cylinder pick-ups.**

Note 3 – A surcharge fee of 15% will be added to the technician rate for same day calls.

6.0 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. Terracon 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 third parties, including Client's contractors, subcontractors, or other parties present at the site.

7.0 TESTING AND OBSERVATION

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. Terracon 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 agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for notifying and scheduling Terracon so Terracon can perform these services. Terracon shall not be responsible for the quality and completeness of client's contractor's work or their adherence to the project documents, and Terracon's performance of testing and observation services shall not relieve contractor in any way from its responsibility for defects discovered in its work or create a warranty or guarantee. Terracon will not supervise or direct the work performed by contractor or its subcontractors and is not responsible for their means and methods.

8.0 AUTHORIZATION

We understand the City will issue a mutually agreed upon contract between City of League City and Terracon to perform the services.

We appreciate the opportunity to submit this proposal and we look forward to participating in this significant project. Please contact us at (281) 557-2900 if you have any questions.

Sincerely,
Terracon Consultants, Inc.
(TBPE Firm Registration No. F-3272)



Blaine Harvey, NICET II
Project Manager



Edwin Vazquez Martinez, EIT
Materials Department Manager



Noosha P. Smith, PE
Regional Manager

Attachment:

- 1) Fee Estimate

Fee Estimate
 Materials Services
 Bay Ridge Subdivision Flood Reduction - Phase 1A
 Terracon Proposal No. P91231090

TASK NUMBER	DESCRIPTION	RATE	QUANTITY	UNITS	TOTAL
1	Earthwork				
	Engineering Technician	\$ 57.00	420.00	hours	\$23,940.00
	Engineering Technician, OT	\$ 85.50	60.00	hours	\$5,130.00
	Standard Proctor	\$ 185.00	4.00	tests	\$740.00
	Optimum Lime Determination	\$ 400.00	2.00	tests	\$800.00
	Atterberg Limits Determination (3 pt.)	\$ 75.00	4.00	tests	\$300.00
	Compressive Strength of Cement Stabilized Sand	\$ 210.00	2.00	tests	\$420.00
	Wash 200	\$ 80.00	4.00	tests	\$320.00
	Vehicle Charge	\$ 8.00	380.00	hours	\$3,040.00
	Nuclear Gauge (Equipment)	\$ 85.00	50.00	days	\$4,250.00
	Sub Total				\$38,940.00
2	Cast-In-Place Concrete				
	Engineering Technician	\$ 57.00	265.00	hours	\$15,105.00
	Engineering Technician, OT	\$ 85.50	40.00	hours	\$3,420.00
	Compressive Strength of 6" x 12" Cylinder	\$ 20.00	160.00	tests	\$3,200.00
	Vehicle Charge	\$ 8.00	255.00	hours	\$2,040.00
	Sub Total				\$23,765.00
3	Project Management / Administration / Safety				
	Clerical / Administrative	\$ 75.00	30.00	hours	\$2,250.00
	Principal Engineer	\$ 195.00	10.00	hours	\$1,950.00
	Project Manager	\$ 135.00	60.00	hours	\$8,100.00
	Sub Total				\$12,300.00
	Total				\$75,005.00