



ENGINEERING/ARCHITECTURAL SERVICES AGREEMENT

(version 8-8-2019)

This AGREEMENT (“Agreement”) is entered by and between **Terracon Consultants, Inc** (“Professional”), 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:** Professional 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 **Supporting construction materials testing related to the Ervin-Hobbs Connector Project (TR1501)**. 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 **August 27, 2019** and shall terminate on **August 27, 2020**. This City reserves the right to terminate this Agreement for convenience upon seven (7) days-notice to the Professional. Upon such termination, the City shall pay Professional, 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 Professional for any services performed or for expenses incurred by Professional after the date of the termination notice that could have been avoided or mitigated by Professional.
3. **Compensation:** Professional 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 **\$93,210** during the term of this Agreement. The City shall for services/good after such services are completed or goods are delivered. Professional 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 Professional, the City shall give Professional specific reasons for disapproval in writing. Upon resolution of any disputed charges, Professional shall submit an amended invoice covering any remaining charges to the City.
4. **Insurance:** The Professional **is** required to maintain insurance through the term of this Agreement.

If required by the City, Professional 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, Professional will enter City property, Professional 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 \$5,000,000 per occurrence; 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. Professional shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Professional shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Liquidated Damages:** The City and Professional agree that in the event Professional fails to comply with any term or provision in this Agreement, the Professional shall pay liquidated damages at a daily rate equal to the total compensation allowed under the Agreement divided by the number of days in the contract term. The parties further agree that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (ii) the liquidated damages specified above bear a reasonable relationship to, and not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any failure by the Professional to provide such goods/services (iii) one of the reasons for the City and Professional reaching an agreement as to such amounts is the uncertainty and cost of litigation regarding the question of actual damages and (iv) the City and Professional are sophisticated business parties and negotiated this Agreement at arm's length.
6. **Independent Contractor:** Professional is an independent contractor and is not an employee, partner, joint venture, or agent of the City. Professional understands and agrees that he/she will not be entitled to any benefits generally available to City of League City employees. Professional 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.
7. **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, Professional 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. Professional 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 Professional hereby waives and appoints the City to assert on the Professional's behalf the Professional'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.
8. **Confidentiality:** During the course of the work and/or services to be provided under this Agreement, Professional may come in contact with confidential information of the City. Professional agrees to treat as confidential the information or knowledge that becomes known to Professional 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. Professional 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 Professional's possession or control. Professional 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 Professional without the prior written approval of the City.
9. **Warranties and Representations:** Professional warrants and agrees that Professional 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, Professional warrants and agrees that Professional will perform the Services in compliance with all City Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
10. **Licenses/Certifications:** Professional 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 Professional's

performance of this Agreement. If Professional is a business entity, Professional 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 Professional.

11. **Performance/Qualifications:** Professional agrees and represents that Professional has the personnel, experience, and knowledge necessary to qualify Professional for the particular duties to be performed under this Agreement. Professional warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.
12. **Conflict of Interest:** Professional warrants, represents, and agrees that Professional presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Professional's performance of the Services hereunder. Professional further warrants and affirms that no relationship or affiliation exists between Professional and the City that could be construed as a conflict of interest with regard to this Agreement.
13. **INDEMNIFICATION: PROFESSIONAL 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 OR CAUSED BY AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY IMPROVEMENT OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER.**
14. **Force Majeure:** Neither the City nor Professional 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.
15. **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.
16. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, Professional 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.
17. **State Auditor:** Professional 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. Professional agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Professional will include this provision in all contracts with permitted subcontractors.

18. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
19. **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 Professional to attempt to resolve any claim for breach of contract made by Professional that cannot be resolved in the ordinary course of business. The Director of Finance of the City shall examine Professional's claim and any counterclaim and negotiate with Professional 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 Professional, (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.
20. **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.
21. **Eligibility to Receive Payment:** Professional 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.
22. **Payment of Debt/Delinquency to State:** Professional 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. Professional agrees that any payments owing to Professional under the Agreement may be applied directly toward any debt or delinquency that Professional owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
23. **Products and Materials Produced in Texas:** If Professional will provide services under the Agreement, Professional 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.
24. **Risk of Loss:** If applicable, all work performed by Professional pursuant to the Agreement will be at Professional'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 Professional's responsibility.
25. **Publicity:** Professional 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.
26. **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.
27. **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.

28. **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.
29. **Authority:** Professional warrants and represents that Professional 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.
30. **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.
31. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002, Texas Government Code, by executing this Agreement Professional verifies that Professional: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
32. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Professional warrants, covenants, and represents that Professional is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

(signature block on next page)

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

TERRACON CONSULTANTS, INC - “Professional”

Noosha Smith, Regional Manager

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

(Exhibit A has a total of **6** pages, which includes this page)

See Next 5 Pages...



July 24, 2019

Mr. Anthony Talluto
City of League City
300 W Walker St.
League City, Texas 77573

Subject: **Cost Estimate for Materials Services
Ervin-Hobbs Connector
League City, Texas
Terracon Cost Estimate Number P91191145**

Dear Mr. Talluto:

Terracon Consultants, Inc. (**Terracon**) is pleased to provide this Cost Estimate for Materials Services. We understand we have been selected based on our qualifications to provide materials testing services for the referenced Project. In this letter we have presented our understanding of the scope of the project, the proposed services, and the budget estimate.

A. PROJECT INFORMATION

The project consists of roadway extension for Ervin Road and Hobbs Road in League City, Texas. This Cost Estimate letter is based on the Alternate Bid - construction of 4-lane concrete pavement for Ervin Road. Specifically, testing will be required for the following components of the project:

- Ervin Road- Approximately 3,350 LF. of 4-lane, 8-inch concrete pavement on lime stabilized subgrade, with concrete curb.
- Hobbs Road - Approximately 350 LF of 3-lane, 8-inch concrete pavement on lime stabilized subgrade, with concrete curb.
- Linear Detention Channel - Approximately 3,000 LF of detention channel with 4-ft. wide concrete pilot and associated concrete drainage structures.
- Driveways
- Sidewalks

Construction Plans prepared by R.G. Miller Engineers, dated July 2019, were reviewed in preparation for this Cost Estimate and Scope of Services.

B. SCOPE OF SERVICES

Services will be provided when scheduled by the Contractor.

1. Earthwork

- Sample backfill, and lime treated subgrade. Prepare and test the samples for the Atterberg Limits and Moisture-Density Relationship.
- Evaluate the pavement subgrade soil for proposed chemical treatment.
- Perform field gradation tests on lime treated subgrade soils.
- Perform field density tests using the nuclear method to determine the moisture

Terracon Consultants, Inc. 551 League City Parkway, Suite F League City, TX 77573
P [281] 557 2900 terracon.com



Cost Estimate Materials Services

Ervin-Hobbs Connector ■ League City, Texas

July 24, 2019 ■ Terracon Cost Estimate No. P91191145



content and percent compaction of the trench backfill and treated subgrade soils.

- Cast strength specimen for cement stabilized sand (CSS) and test for compressive strength at 48 hours.

2. Concrete – Paving & Drainage Structures

- Sample the fresh concrete for paving and perform required tests, including slump, air content, concrete temperature, and cast test specimens during placements.
- Perform compressive tests of concrete test cylinders cast in the field.

Please note: Terracon will require the approved concrete mix designs to provide these services.

3. Asphalt (if needed)

- Sample asphalt materials during placement, prepare, and test the samples for asphalt content, gradation, bulk specific gravity of lab molded specimens, theoretical maximum specific gravity, and Hveem stability and density.
- Perform in-situ nuclear density tests to assist in determining an asphalt rolling pattern, when requested by the contractor.
- Perform in-situ nuclear density tests to determine the relative percent compaction of the asphalt at the frequency specified.

4. Project Management

- Attend construction meetings, if requested
- Review concrete mixes submitted to Terracon, if requested
- Coordinate field and laboratory testing,
- Communicate with Terracon field technicians, Contractor, and Owner's site representative,
- Review laboratory and field test reports,
- Review our budget and invoice.

Scheduling Retests:

It is the responsibility of your representative to schedule retests in a like manner to scheduling our original services. Terracon shall not be held responsible for retests not performed because of a failure to schedule our services or any subsequent damage caused because of a lack of retesting.

Additional Services:

Terracon will issue a short Supplement to the Agreement form, or Supplement Cost Estimate, that outlines the additional work to be performed and the associated fees. Please authorize us to begin this additional work by returning a signed copy of the Supplement.

Project Schedule:

Field testing services will be provided on a “call-out” basis when scheduled by your representative. A minimum of 24-hours’ notice is required to schedule our services, although we will attempt to meet requests in a shorter time frame. To schedule our services please contact our dispatcher at (281) 557-2900. The dispatch hours are from 07:00 a.m. to 5:00 p.m. Messages left after business hours will be checked the following business day. Terracon will only provide testing when called by your representative. The extent of our observations and documentation will be limited to the items observed during the site visits. Terracon shall not be held responsible for tests not performed because of a failure to schedule our services or any subsequent damage caused because of a lack of testing.

C. COMPENSATION

Our estimated total budget to perform the testing is \$93,210, for Alternate Bid, shown in the table below.

Please note that this is only a budget estimate and not a not-to-exceed price. Our fees will be based on the unit rates provided in the attached table. You will be invoiced on units used. Services not included in this Cost Estimate, which may be requested or provided throughout the job, will be billed at Terracon rates, available upon request. Overtime is defined as all hours more than eight per day, and all hours worked on weekends and holidays.

A 4-hour minimum charge will be applied to site visits other than sample or cylinder pickups. All labor, equipment and transportation charges are billed on a portal to portal basis from our office. These fees Do Not Include Retesting or Cancellations on site. Terracon will track costs associated with retests and cancellations and provide it to the City.

Cost Estimate Materials Services

Ervin-Hobbs Connector ■ League City, Texas

July 24, 2019 ■ Terracon Cost Estimate No. P91191145

**Budget Estimate****Ervin-Hobbs Connector-Based on Alternate Bid 4 Lane Concrete**

Service	Quantity	Unit	Unit Rate	Estimate
1.0 Field (Earthwork, Utility Backfill, Concrete Pavement, and Channel Structures)				
Based on 9 Month Construction Schedule, Terracon On site 75% of time for 8-hr. days				
Engineering Technician	1080	hour	\$ 50.00	\$ 54,000.00
Engineering Technician, OT	162	hour	\$ 75.00	\$ 12,150.00
Nuclear Gauge	85	day	\$ 60.00	\$ 5,100.00
Vehicle Charge (including pick ups)	135	day	\$ 60.00	\$ 8,100.00
			sub-total	\$ 79,350.00
2.0 Laboratory				
Moisture Density Relationship	8	each	\$ 175.00	\$ 1,400.00
Atterberg Limits	8	each	\$ 65.00	\$ 520.00
Cylinder Tests (4 cyl/set)	160	each	\$ 18.00	\$ 2,880.00
Lime Determination	2	each	\$ 450.00	\$ 900.00
Compressive Strenght of CSS specimens(48-hr)	4	set	\$ 150.00	\$ 600.00
			sub-total	\$ 6,300.00
3.0 Project Management & Administration				
Administrative	36	hour	\$ 60.00	\$ 2,160.00
Project Manager	40	hour	\$ 135.00	\$ 5,400.00
			Total	\$ 93,210.00
Service	Quantity	Unit	Unit Rate	Estimate
Asphalt Testing if Base Bid is used				
Engineering Technician	50	hour	\$ 50.00	\$ 2,500.00
Engineering Technician, OT	8	hour	\$ 75.00	\$ 600.00
Nuclear Gauge	10	day	\$ 60.00	\$ 600.00
Vehicle Charge (including pick ups)	10	day	\$ 60.00	\$ 600.00
Asphalt Lab Series	3	each	\$ 500.00	\$ 1,500.00
			sub-total	\$ 5,800.00

D. 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 and 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.

Cost Estimate Materials Services

Ervin-Hobbs Connector ■ League City, Texas

July 24, 2019 ■ Terracon Cost Estimate No. P91191145



E. 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.

AUTHORIZATION:

Agreement for Services will be issued by the City of League City.

Thank you for your continued trust in Terracon. We look forward to working with you on this Project. Please call us at 281-557-2900 if you have any questions or comments regarding this document.

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



Noosha P. Smith, P.E.
Regional Manager



For **Sean Barber**
Materials Department Manager