



City of Galveston

CAPITAL PROJECTS STAFF REPORT

16 July 2019

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: Daniel Christodoss, P.E., City Engineer

RE: Consider for approval a proposal from Terracon Consultants, Inc., for the Downtown Livable Communities Initiative (LCI) Phase 2 (Pedestrian Transit Improvements) – Strand to Post Office and 20th to 25th Street in the amount not to exceed \$18,240.00 to perform Construction Material Testing Geotechnical Engineering Services. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

I. Background

- A. TXDOT issued a call for projects under the Federal Transportation Alternatives Program (TAP) for pedestrian – transit connectivity, safe routes to school, bike trails, etc.
- B. The City’s proposal was accepted and the project was funded for design and construction.
- C. The City hired The Goodman Corporation to perform the design.
- D. The design was completed and advertised for bids on June 3rd, 2019 with the bid opening date of July 23rd, 2019.
- E. The project involves the construction of concrete curbs, wheelchair ADA ramps and sidewalks, and alternates for consideration which include street names and wayfinding signs, benches and historic stone sidewalk.
- F. At the time the Construction Contractor is selected subsequent to the bid opening on July 23rd, and construction begins, Construction Material Testing by an Independent Geotechnical Engineering Testing Laboratory is important, to verify and document quality assurance/quality control (QA/QC) during construction.

II. Current Situation

- A. City requested a proposal from Terracon Consultants, Inc., an independent Geotechnical Engineering Firm that was prequalified by City Council in 2018 for a period of 3 years.
- B. Terracon provided a proposal for \$18,240.
- C. Terracon is available to perform at the City’s request.

III. Impact or ramifications:

The project is part of the City’s continued efforts to improve the pedestrian-transit connectivity throughout Galveston. Lack of Construction Material Testing by an





City of Galveston

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Independent Geotechnical Engineering Firm will prevent the City from verifying QA/QC during construction of the project by the contractor. This will lead to future problems if the quality of material and workmanship is not verified with in-situ and offsite laboratory testing standards employed during construction.

IV. Alternatives in order of priority

- A. Approve the proposal from Terracon Consultants, Inc., for the Downtown Livable Communities Initiative (LCI) Phase 2 (Pedestrian Transit Improvements) – Strand to Post Office and 20th to 25th Street in the amount not to exceed \$18,240.00 to perform Construction Material Testing Geotechnical Engineering Services.
- B. Do not approve the request and risk the lack of QA/QC verification of materials and workmanship during construction.

V. Recommendation

Approve the proposal from Terracon Consultants, Inc., for the Downtown Livable Communities Initiative (LCI) Phase 2 (Pedestrian Transit Improvements) – Strand to Post Office and 20th to 25th Street in the amount not to exceed \$18,240.00 to perform Construction Material Testing Geotechnical Engineering Services.

VI. Fiscal Impact Report

Requested by: Daniel Christodoss, P.E., City Engineer
 Funding Source: DWNPED 350I INFRASTRUCTURE & DEBT SERVICE FUND 3199
 DOWNTOWN LCI II (PEDESTRIAN TRANSIT CONNECT)
 (To install street furniture, sidewalks paid by FTA. Companion
 TxDOT - TAP project will cover ADA ramps and sidewalk
 reconstruction/repair).

Materials Testing	\$ 18,240.00
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Total Cost of Implementation	\$ 18,240.00
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Respectfully Submitted,

Daniel Christodoss, P.E.
City Engineer





July 3, 2019

City of Galveston
823 Rosenberg
Galveston, Texas 77553

Attn: Mr. Daniel Christodoss
E: DChristodoss@GalvestonTX.Gov

**RE: Cost Estimate for Materials Services
Downtown Pedestrian Transit Improvements
Galveston, Texas
Terracon Document No. P91191130**

Dear Mr. Christodoss:

It is our understanding that Terracon Consultants, Inc. (**Terracon**) has been selected based solely on our qualifications to provide materials services on the referenced Project. In this letter we have presented our understanding of the scope of the project, our proposed services, and our budget estimate.

A. PROJECT INFORMATION

The Project consists of the rehabilitation of the downtown pedestrian transit system, including sidewalks, ramps, new signs, landscaping, and protection of trees and historical landmarks. Project duration is 400 calendar days, or end of construction.

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

- Construction plans by Asakura Robinson Company, dated January 14, 2019, and
- Construction specifications by Asakura Robinson Company, dated January 14, 2019.

B. SCOPE OF SERVICES

Terracon proposes to provide the following services when scheduled by the contractor or Owners representative.

1. Earthwork:

- Sample subgrade, backfill, and treated materials. Test the samples for classification by the Atterberg Limits and moisture density relationship.
- Perform field density tests using the nuclear method to determine the moisture content and percent compaction of the material

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



2. Concrete:

- Sample the fresh concrete for each mix, perform required tests, including slump, air content, concrete temperature, and cast test specimens during placements. **Terracon requests that a copy of the approved mix design(s) be provided to us prior to placement of the concrete.**
- Perform compressive tests of concrete test cylinders cast in the field.

3. Project Management and Administration:

- Communicate with Terracon Engineering Technicians, Contractor, and Owner's site representative.
- Review laboratory and field test reports.
- Monitor our budget and invoice.

Additional Services:

If work beyond the scope listed above is requested by the Client, 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. To authorize us to begin this additional work, you simply return 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 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. Terracon shall not be held responsible for tests not performed as a result of a failure to schedule our services or any subsequent damage caused as a result of a lack of testing. Terracon recommends that a copy of this proposal be provided to the general contractor so they understand our scope of services and schedule us accordingly. Please note that the number of tests and trips described in the Scope of Services does not constitute a minimum or maximum number of tests or trips that may be required for this project.

C. COMPENSATION

Our estimated budget for providing the scope of services is **\$18,240**. We will not exceed our estimated budget amount unless authorized by the Client. Overtime is defined as all hours in excess of eight per day, Monday through Saturday, and all hours worked holidays. Overtime rates will be 1.5 times the hourly rate quoted.

Budget Estimate				
Downtown Pedestrian Transit Improvements				
Service	Quantity	Unit	Unit Rate	Estimate
1.0 Field				
Engineering Technician	200	hour	\$ 50.00	\$ 10,000.00
Engineering Technician, OT	10	hour	\$ 75.00	\$ 750.00
Nuclear Gauge	10	day	\$ 60.00	\$ 600.00
Vehicle Charge (including pick ups)	45	day	\$ 60.00	\$ 2,700.00
			sub-total	\$ 14,050.00
2.0 Laboratory				
Moisture Density Relationship	2	each	\$ 175.00	\$ 350.00
Atterberg Limits	2	each	\$ 60.00	\$ 120.00
Cylinder Tests (4 cyl/set)	120	each	\$ 16.00	\$ 1,920.00
			sub-total	\$ 2,390.00
3.0 Project Management & Administration				
Administrative	6	hour	\$ 50.00	\$ 300.00
Project Manager	12	hour	\$ 125.00	\$ 1,500.00
			Total	\$ 18,240.00

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, 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.

E. TESTING AND OBSERVATION

Terracon will only provide testing when called by your onsite representative. The extent of our observations and documentation will be limited to the items observed during the site visits.

Owner 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. Owner understands that testing and observation are not continuous or exhaustive, and are conducted to reduce – not eliminate – project risk. Owner

agrees to the level or amount of testing performed and the associated risk. Owner 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 Owner'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.

F. AUTHORIZATION

Please authorize us to proceed by signing the attached Agreement issued by the City of Galveston and returning a signed copy to 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.
TX Registration No. F-3272



**Mark D. Wells, P.E., PMP
Principal**



**Sean Barber
Materials Department Manager**

Attachment: Agreement

MATERIALS TESTING SERVICES AGREEMENT

Downtown Pedestrian Transit Improvements (Project)

This Materials Testing Services Agreement (“Agreement”) is hereby entered between the City of Galveston, Texas, (the “City” or “Client”) and Terracon Consultants, Inc. (“Terracon” or “Consultant”), a Corporation for the rendition of materials testing services described herein for the following project. References to the City/Client and Terracon /Consultant, jointly shall be referred to as the “Parties” to this Agreement.

NOW THEREFORE, the parties do mutually agree as follows:

1. **Scope of Services (work)**: The scope of materials testing services subject to this Agreement is described in **Exhibit A** and includes the following documents attached hereto and incorporated herein for all purposes:
 - Project – Downtown Pedestrian Transit Improvements.
 - RFQ # **#18-04** (Terracon Prequalified by City Council in October 2018 for 3 years)
 - **Exhibit A** = Consultant Cost Estimate #P91191130; Project Information; Scope of Services; Estimated Testing Schedule; and Proposal/CMT Acceptance Form.
2. **Time of Performance**: The services set forth in Consultant’s proposal (**Exhibit A**) shall commence upon the issuance of a Notice to Proceed. Due to the nature and extent of the project, the work is expected to be completed within (400) calendar days from Notice To Proceed terminating at 400th calendar day or end of construction.
3. **Independent Contractors**: The parties are independent Contractors as to each other. Nothing in this Agreement shall be construed as creating any agency or employment relationship. Neither party shall make any representations tending to create an apparent or implied agency or employment relationship. Neither party has the authority to act for the other or to create obligations or debts binding on the other. Neither party shall be responsible for any obligations or expenses incurred by the other.
4. The City does not waive or relinquish any governmental immunities or defenses on behalf of itself and its trustees, officers, employees, or agents as a result of the execution of this Agreement and performance of the functions or obligations described herein. Nothing herein shall be construed as creating any personal liability on the part of any officer, or director, or employee or representative of the City.
5. **Standard of Care**: The standard of care for all related services performed or furnished by Terracon under this agreement will be performed in a manner consistent with the level of care and skill ordinarily exercised and used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

Consultant shall perform the services described in this Agreement in accordance with all applicable federal, state, county, city and/or other governmental entity statutes, regulations, standards, codes and ordinances, including but not limited to all Federal Specifications and Standards and the City Code of the City of Galveston, and all applicable requirements of the current edition reference standards of the AASHTO, ACI, AISC, ASTM, and AWS. No pleas of misunderstanding will be considered on account of ignorance thereof. Consultant shall likewise impose the same obligations contained in this Agreement upon all of its sub-consultants, if any. The Consultant shall be responsible for the accuracy of its services and shall promptly make necessary revisions resulting from its errors, omissions or negligent acts without compensation.

6. Access to Information and Site Access: It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined above shall be furnished to Terracon by the City and its agencies. The City and its agencies will cooperate with Terracon in every way possible to facilitate the performance of the work described in the Agreement.
7. Appropriations: The obligations of the City to make payment under this Agreement are expressly subject to appropriations by the City of funds that are lawfully available to be applied to such purpose.
8. Compensation: The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed **Eighteen Thousand Two Hundred Forty Dollars (\$18,240)**. Invoices are submitted by Terracon each month (not necessarily falling on the first or last day of the month). City shall notify Terracon in writing, of any and all objections, if any, to an invoice within ten (10) days of the date of invoice. Otherwise, the invoice shall be deemed proper and acceptable by the City. Amounts indicated on invoices are due and payable immediately upon receipt. City's account will be considered delinquent if Terracon does not receive full payment within thirty (30) days after the invoice date. Parties shall attempt to resolve any payment disputes within sixty (60) days or the matter may be submitted to mediation.
9. The compensation sum includes reimbursement for all labor, administrative, overhead, and all other expenses associated with the Project, including (but not limited to) all expenses incurred by Consultant in the performance of the work. The City shall not be responsible for payment to Terracon for any additional services or expenses not specifically included in **Exhibit "A"**, except upon execution of an amendment to this Agreement in writing by both parties.
10. INDEMNIFICATION: FOR CONSIDERATION RECEIVED, Terracon shall, to the extent permitted by law, indemnify, save and hold the City of Galveston harmless, including City's officers, and employees, from any claims, actions, lawsuits, proceedings,

damages, loss, judgments, liabilities or expense on account of damage to property and injuries, including death, to the extent caused by any negligent act, error or omission of Terracon or those acting under Terracon's supervision or control. Terracon shall not be responsible, however, for any loss, damage, liability or expense on account of damage to property and injuries, including death, by which may arise from the negligence of the City. **Terracon shall comply with the requirements of all current applicable laws, rules and regulations and shall indemnify and hold harmless the City and its agency members from and against the failure to comply with those laws, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.**

11. Construction: This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Galveston County, Texas. Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement. In any case, if one or more of the provisions contained in this Agreement 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 thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
12. Termination of Agreement for Cause: If, through any cause, Terracon shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Terracon shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to Terracon of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Terracon under this Agreement shall, at the option of the City, become property of the City and Terracon shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, Terracon shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by Terracon, and the City may withhold any payments to Terracon for the purpose of set-off until such time as the exact amount of damages due the City from Terracon is determined.
13. Termination for Convenience of the City: The City may terminate this Agreement at any time by giving at least ten (10) days' notice in writing to Terracon. If the Agreement is terminated by the City as provided herein, Terracon will be paid for the time provided and expenses incurred up to the termination date. If this Agreement is terminated due to the fault of Terracon, Paragraph eleven shall apply.

14. Modification: No change in the terms of this Agreement shall be binding unless it is in writing and signed by an authorized representative of both parties.
15. Force Majeure: No party to this agreement shall be deemed in violation if it is prevented from timely performing any of its obligations by reason of labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, or other circumstances for which the party is not responsible or which is not in its control.
16. Proof of Insurance: Terracon shall maintain certain types of insurance protection throughout the duration of the project. All insurance policies are to be issued by an insurance Terracon authorized to do business in the State of Texas, using an insurance Company with an A.M. Best rating of a B+ or better.
17. Required Insurance: Commercial general liability insurance, naming the City of Galveston as an additional insured and as certificate holder, and waiving subrogation per the contractual requirements of this project; Automobile Liability Insurance, Worker's Compensation Insurance and Professional Liability Insurance. Limits are to be equal to or greater than:
- a. **Commercial general liability insurance:**
 - \$2,000,000 general liability (includes products and personal, etc.)
 - \$1,000,000 fire damage
 - \$1,000,000 automobile damage
 - \$500,000 workers compensation employers' liability
 - Statutory limits for workers compensationInsurance coverage shall be on an "occurrence basis"
 - b. **Professional Liability Insurance: \$1,000,000 per claim and \$2,000,000 Aggregate.** Consultant shall submit evidence at the time of execution of this Agreement that it has in full force and effect professional liability errors and omissions insurance. Consultant shall maintain such insurance in full force and effect throughout the duration of this Agreement and thereafter for a period of one year.
18. Assignability: Terracon shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City. Unless specifically stated to the contrary in any written consent to assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
19. Reports and Information: Terracon, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or

services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement. Any reuse of the work product on extensions of this project or on any other project without Terracon's prior written consent shall be at the re-user's sole risk and without liability to Terracon.

20. Consultant shall submit written reports to the City including a general description of the inspections and tests performed with identification of the specific Project area/materials involved, all data required to be recorded under AASHTO, ACI, AISC, ASTM and AWS Standards and other standard test methods employed, identification of the standard sampling and test methods utilized, all findings and test results, and an appendix of terminology and symbols used, and in accordance with **Exhibit A**.
21. Findings Confidential: To the extent permitted by law, all of the reports, information, data, etc., prepared or assembled by Terracon under this Agreement are confidential and Terracon agrees that they shall not be made available to any individual or organization without the prior written approval of the City.
22. Copyright: No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of Terracon.
23. Compliance with Local, State and Federal Laws: This Agreement shall be construed under and in accordance with the laws of the State of Texas, with jurisdiction in the courts of the State of Texas and venue in Galveston, County regardless of where the obligations of the parties were performed. By execution of this Agreement, the parties agree to subject themselves to the jurisdiction of the Courts of the State of Texas in all matters relating to or arising out of this Agreement or the Work.
24. Notices: All notices required or permitted under this Agreement shall be in writing and shall be deemed given when delivered in person or three days after deposit in the United States Mail, postage prepaid, addressed to the party's address reflected at the end of this Agreement. A party's notice address may be changed from time to time by that party's providing written notice to the other. A copy of the notice(s) shall be sent to:

City Attorney
City of Galveston
823 Rosenberg, Room 203
P.O. Box 779
Galveston, Texas 77553


Terracon Consultants, Inc.
551 League City Pkwy, Ste F
League City, Texas 77573

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first above written.

CITY OF GALVESTON, TEXAS

TERRACON CONSULTANTS, INC.

BY: _____
NAME: Brian Maxwell
TITLE: City Manager
DATE: _____

BY: 
NAME: Sean Barber
TITLE: Materials Services Manager
DATE: 7/3/2019

ATTEST:

By: _____
Janelle Williams,
City Secretary

APPROVED AS TO FORM:


City Attorney's Office

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

BEFORE ME, a Notary Public in and for the State of Texas, on this day personally appeared Sean P. Barber, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for and as the act and deed of Terracon Consultants, Inc. as the Regional Manager thereof, and for the purposes and consideration therein expressed and in the capacity thereon stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 3 day of, July, 2019.




Notary Public In and For
The State of Texas