



1459 Washington St.
Muscatine, IA 52761-5040
(563) 263-8933
Fax (563) 263-2127

Public Works

City Transit
263-8152

MEMORANDUM

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

To: Gregg Mandsager, City Administrator
CC: Fran Donelson, Secretary
FROM: Randy Hill, Public Works Director
DATE: July 18, 2011
RE: Council Action – Terracon Agreement for Hershey Reconstruction Project

INTRODUCTION:

The City of Muscatine is engaged in a reconstruction of Hershey Ave. from Newcomb Blvd. to Clinton St. This project uses Federal Surface Transportation Funds and will be subject to a federal audit.

BACKGROUND:

The reconstruction includes portland cement concrete (PCC) patches of the existing pavement, the addition of PCC curb and gutter and sidewalk and hot mix asphalt overlay. Because federal funds are involved state (DOT) standards require individuals that are state certified perform the concrete and asphalt testing.

RECOMMENDATION/RATIONALE:

Terracon has given the city a proposal for a "Not Too Exceed" \$10,000 to perform the following services:

1. Grade Testing of the Portland Cement Concrete (PCC)
2. Plant Monitoring Services for Ready Mix Concrete Plant
3. Grade Observation of HMA Pavement
4. Plant Monitoring Services for HMA Plant

The city staff has worked with Terracon on past projects with excellent results. We recommend issuing a Purchase Order to Terracon in the amount of \$10,000 for construction observation and testing services.

If you have any questions, please contact me.

**"I remember Muscatine for its sunsets. I have never seen any
on either side of the ocean that equaled them" — Mark Twain**

BACKUP INFORMATION:

1. Terracon Proposal
- 2.
- 3.
- 4.

May 19, 2011

City of Muscatine IA
Public Works
1459 Washington Street
Muscatine, Iowa 52761

Attention: Mr. Jon Lutz

Re: Proposal for Construction Observation & Testing Services
Hershey Avenue Reconstruction – STP-U-5330(618)--70-70
Muscatine, Iowa
Terracon Proposal No. P07110140r1

Dear Mr. Lutz:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit our proposal for construction observation and testing services for the referenced project. This proposal outlines our understanding of the scope of services requested, our proposed scope and a schedule of our fees.

A. PROJECT INFORMATION

The project consists of reconstruction of Hershey Avenue from about Newcomb Boulevard to Clinton Street in Muscatine, Iowa. We understand the reconstruction will include portland cement concrete (PCC) patches of the existing pavement, the addition of PCC curb and gutter and sidewalk and hot mix asphalt (HMA) overlay.

B. SCOPE OF SERVICES

The requested scope of services includes the following:

Grade Testing of Portland Cement Concrete (PCC) – During concrete placement, sample fresh portland cement concrete; perform slump, air content and temperature tests. Prepare flexural strength beam specimens. Transport beam specimens to our laboratory for flexural strength testing.

Plant Monitoring Services for Ready Mix Concrete Plant – During production of concrete, monitor, sample and perform laboratory tests on materials as required by the Iowa Department of Transportation. Review performance of plant inspections.

Grade Observation of HMA Pavement – During HMA placement, observe roller pattern performed by contractor, observe temperature of mix and obtain delivery tickets.

Terracon Consultants, Inc. 870 40th Avenue Bettendorf, Iowa 52722

P [563] 355 0702 F [563] 355 4789 terracon.com



Plant Monitoring Services for HMA Plant – During production of HMA, monitor, sample and perform select laboratory tests on materials as required by the Iowa Department of Transportation. Review performance of plant inspections. Select random locations for coring by the contractor and perform laboratory testing on field cut cores obtained by the contractor. We anticipate the DOT will perform mix verification testing such as gyratory unit weight.

Based on the scope of services requested we anticipate Iowa Department of Transportation certified personnel will be required for grade testing of portland cement concrete and batch plant monitoring services.

Project management and engineering consulting including project coordination, direction, preparation and review of reports of the test results, construction progress meeting involvement, site visits, and budget management will be required as part of our construction testing services. We believe that effective project management includes on-going communication between the owner, project team members, the on-site contractors and Terracon.

Terracon will provide results verbally in the field at the time of our services and written reports will be distributed in about 5 business days. Should discrepancies occur, we will distribute those results immediately.

Field testing services will be provided on an "as-requested" basis for this project. Your field personnel or personnel designated by you will be responsible to schedule our services. Our services should be scheduled a minimum of 1 working day in advance. For "as-requested" services, scheduling personnel will be on an as-available basis which may require changes of personnel assigned to the project; however, an effort will be made to assign the most cost effective personnel to your project. Terracon will not be responsible for scheduling our services and will not be responsible for tests that are not performed due to a failure to schedule our services on the project. Terracon will only provide services when requested by your designated representative.

C. COMPENSATION

The fees for our services will be billed in accordance with the attached unit charges and hourly rates (Exhibit C). A project budget of \$10,000 has been established by the City for our services. Should our fees exceed the proposed budget, Terracon will contact the City and require written authorization to proceed prior to providing further services. Interim invoices for services provided will be sent to your attention at the above address, with payment due within 30 days of your receipt of the invoice. Our standard terms and conditions are attached for your review and are considered a part of our contract for services.

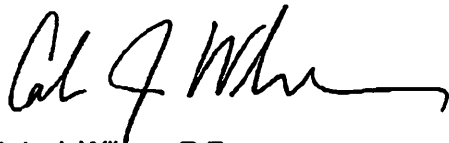
D. AUTHORIZATION

This proposal may be accepted by executing the attached Agreement for Services and returning one copy to Terracon. Acceptance of this proposal indicates your willingness to pay our invoice upon receipt, in accordance with the attached Terms and Conditions.

Thank you for considering Terracon for your project. If you have any questions concerning this proposal, please contact us.

Sincerely,

Terracon Consultants, Inc.,



Cale J. Wilson, P.E.
Construction Services Manager



Terry Markle
Laboratory Manager

Enclosures

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Exhibit C - Fee Schedule

PERSONNEL

Senior Project Engineer P.E.....	\$ 105.00 / hour
Project Manager	\$ 95.00 / hour
HMA Plant Monitor	\$ 80.00 / hour
PCC Plant Monitor.....	\$ 65.00 / hour
Grade Technician	\$ 49.00 / hour

- * Field services provided on Saturday, Sunday, Holidays, after 5:00 PM, prior to 7:00 AM, or in excess of 8 hours per day portal to portal are also subject to surcharge increase to the hourly rate of 1.5.

EQUIPMENT & EXPENSES

Vehicle Charge (private/company vehicle & mileage).....	\$ 55.00 / trip
Beam mold, use and cleaning, each	\$ 25.00 / day
Misc. Charges (shipping, rental equipment, outside labor, materials, etc.).....	Cost + 15%

LABORATORY

Sieve Analysis	\$ 100.00 / each
Flexural Strength of Concrete Beam	\$ 50.00 / each

AGREEMENT FOR SERVICES

This **AGREEMENT** is between City of Muscatine IA ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Hershey Avenue Reconstruction project ("Project"), as described in the Project Information section of Consultant's Proposal dated May 19, 2011 ("Proposal") 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 Scope of Services section of the Proposal ("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. 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 Compensation section of the Proposal 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. 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. For a limited time period not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client, however Client understands that such reliance will not be granted until those parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee.
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. UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE 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. **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)

Terracon

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 agrees to the level or amount of testing performed and the associated risk. 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.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of tests (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 Material unless specifically provided in the Services, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and reasonable disposal costs. 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. Accordingly, Client waives any claim against Consultant and agrees to indemnify and save Consultant, its agents, employees, and related companies harmless from any claim, liability or defense cost, including attorney and expert fees, for injury or loss sustained by any party from such exposures allegedly arising out of Consultant's non-negligent 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.** 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.

Consultant: **Terracon Consultants, Inc.**

By: *Cale J. Wilson* Date: 5/19/11

Name/Title: **Cale J. Wilson, P.E.**

Construction Services Manager

Address: **870 40th Avenue**

Bettendorf, Iowa 52722

Phone: **563.355.0702** Fax: **563.355.4789**

Client: **City of Muscatine IA**

By: _____ Date: _____

Name/Title: _____

Address: **1459 Washington Street**

Muscatine, Iowa 52761

Phone: **563.263.5933** Fax: _____

Reference Number: P07110140