



September 11, 2024

Yellowstone County
METMAINBLDG P.O. Box 35015
Billings, MT 59107

Attn: Mr. Kevan Bryan

Re: Proposal for Materials Testing & Special Inspection Services
Metra Park South Expo
308 6th Ave. N..
Billings, Montana
Terracon Proposal No. P26241079

Dear Mr, Bryan

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to provide construction materials testing and special inspection services for the Metra Park South Expo project. Our proposal includes a description of the project information, our proposed scope of services, estimated quantities, unit rates, and a total estimated fee for our services. We have organized our proposal as follows for ease of reference:

Exhibit A	Project Information
Exhibit B	Scope of Services
Exhibit C	Compensation
Exhibit D	Assumptions

Our base fee to perform the Scope of Services described in this proposal is presented in Exhibit C.

1.0 CAPABILITIES AND EXPERIENCE

Construction Materials Testing & Special Inspection Services

Our team of inspectors and technicians are experienced with providing materials testing, special inspections and/or observations of concrete, soils, and aggregate in the local area and are familiar with the recognized building jurisdiction requirements.

Terracon Consultants, Inc. 2110 Overland Avenue, Suite 124 Billings, Montana 59102
P [406]656-3072 F [406] 656-3578 www.terracon.com

Environmental



Facilities



Geotechnical



Materials

Laboratory Capabilities

Our laboratory is accredited by AASHTO which is recognized by ASTM E329 Standard Specification for Agencies Engaged in Construction Inspection, Testing, or Special Inspection. The scope of accreditation includes the field of Soils, Aggregates, Portland Cement Concrete, and Hot Mix Asphalt. As a requirement of accreditation, we regularly participate in the Proficiency Sample Programs of both AASHTO and the Concrete and Cement Reference Laboratory (CCRL). Our office includes a fully equipped laboratory and employs engineering technicians and special inspectors certified by the American Concrete Institute (ACI), American Welding Society (AWS), and the International Code Council (ICC). We provide a rigorous internal training program where our staff are evaluated in specific field and laboratory test procedures by internal Terracon auditors and external agencies.

- Accredited by AASHTO Materials Reference Laboratory (re:source)
- Inspected by Concrete and Cement Reference Laboratory (CCRL)

2.0 AUTHORIZATION

This proposal may be accepted by fully executing and returning the attached Agreement for Services. Please be aware that we will be unable to distribute field and laboratory reports until a signed contract is received. This proposal is valid only if authorized within 45 days from the proposal date.

We appreciate the opportunity to provide this proposal and look forward to working with you. Please give us a call if you have any questions or comments regarding this proposal.

Sincerely,
TERRACON CONSULTANTS, INC.

Eric Reifschneider
Project Manager

Travis Goracke
Staff Engineer

Copies to: Addressee (via e-mail)

Enclosures: Fee Estimate
Agreement for Services



EXHIBIT A - PROJECT INFORMATION

Pertinent project information is summarized below:

Item	Description
Location	The proposed project location is located at 308 6 th Ave N in Billings, Montana

EXHIBIT B - SCOPE OF SERVICES

Terracon proposes to provide materials testing and special inspection services as summarized below:

Item	Description
Earthwork	Field density compaction testing will be performed in areas as directed by the client on an as-requested basis by qualified personnel during site earthwork and backfill operations at the site. The field services will be supported by appropriate laboratory evaluation of soils used as fill or backfill on the site. The laboratory testing will include laboratory moisture-density relationship (Proctor). Laboratory material evaluations will be conducted at a minimum for each type of soil encountered during fill placement. The testing will be performed to determine compliance with project specifications or as recommended in the geotechnical engineering report.
Concrete	During concrete placements, observation, sampling and testing will be performed by Terracon. The concrete will be sampled and tested for slump, air content, unit weight, and temperature at the time of placement. Testing will be performed in general accordance with project plans and specifications including the following: <ul style="list-style-type: none"> ■ Verification of approved design mix; ■ Provide observations of placement procedures, consolidation, and curing and protection; and Cast 1 set of 4 (4-inch by 8-inch) cylinders for each 150 cubic yards or fraction thereof.
Asphalt	The HMA will be sampled/cored and submitted to our laboratory for density analysis according to project requirements.
Project Management	A project manager will be assigned to the project to review the daily activity and assist in scheduling the work. Field and laboratory tests will be reviewed prior to final submittal. The project manager will be responsible for the project budget, communicating with the contractor regarding schedule, deviations, and documenting the resolution of outstanding deviations. To help create a good working relationship with the contractor and for the contractor to better understand our scope of work for the project, we request that Terracon be invited to preconstruction meetings prior to each phase of construction.

Commitment to Timely Report Turnaround:

We understand the importance of report turnaround to our clients and we are committed to delivering test results on a timely basis as well as the following reporting standards:

- Failing tests or non-conformance items will be communicated to the designated parties prior to leaving the site and handwritten draft reports are available at the end of each day.
- Final reports with non-conformances (Deviation Reports) will be provided within 24 hours of testing.
- Final reports without non-conformances will be provided within five business days.
- Final laboratory test reports will be provided within two days of test completion.

Terracon Field Representative: In addition to the services described above, our field personnel will provide the following services during their visit:

- Check in with the project general superintendent upon arrival on-site.
- Confirm that current approved construction documents are available during our visit.
- Notify the general contractor of our field observations and test results prior to leaving the site.
- Submit a written draft report to the Terracon project manager for review.
- Our field personnel have the right to decline work if they believe the conditions are not safe.

Scheduling of Services: We understand the client may not be involved with scheduling our services; this is typically the responsibility of the general contractor. We request the following information be passed on to whom will be responsible for scheduling our services.

- Scheduling testing services must be requested no later than 5:00 pm on the business day preceding the work.
- For structural steel testing and observations, we request 72 hours of notice.
- Scheduling is performed through our dispatcher by calling (406) 371-9836.
- Cancellation of services should be done prior to a Terracon representative mobilizing to the project. Failure to do so will result in a cancellation fee.
- Terracon will not be responsible for tests that are not performed due to a failure to schedule our services on the project.
- Testing and observations will only determine compliance with project specifications at the test locations, at the time our services are performed.

EXHIBIT C - COMPENSATION

Based on the project information available for our review, our time and materials estimated budget to perform the proposed scope of services is **\$14,735.00** with a not to exceed price of **\$18,000.00**. A summary of our unit rates, estimated quantities, and the resulting costs is included on the attached Fee Estimate. Any additional out of scope items will be performed within accordance with our current fee schedule.

Many factors, including those out of our control, such as weather and the contractor's schedule including overtime and weekend work, and the need for re-testing will dictate the final fee for our services. We will not exceed our budget without first notifying you, and providing a summary of work performed to date and remaining work. We will track the costs of re-testing, stand-by time, and cancellations separately.

For purposes of our proposal, overtime is defined as all hours worked above 8 hours per day, Saturday, Sunday and Terracon recognized holidays. All charges are portal to portal from our local office.

EXHIBIT D - ASSUMPTIONS

- We have assumed that contractors on the site will work a single shift, typical schedule of 5 days per week.
- An out of scope charge at the applicable unit rate will be applied for all stand-by time and/or time spent on activities which are not cancelled with prior notice.



FEE ESTIMATE

SERVICES	UNIT RATES			QTY	TOTAL
Earthwork Observation and Testing					
Lab Compaction Characteristics (Proctor)	\$180.00 per test	2 tests		2	\$360.00
Engineering Technician	\$85.00 per hour	24 visits	1.5 hours/visit	36	\$3,060.00
Vehicle Charge	\$20.00 per trip	24 visits		24	\$480.00
				Subtotal	\$3,900.00
Concrete Testing					
Engineering Technician	\$85.00 per hour	7 visits	2 hours/visit	14	\$1,190.00
Concrete Cylinders	\$30.00 per cylinder	7 tests	5 cyl/test	35	\$1,050.00
Specimen Retrieval	\$85.00 per hour	7 visits	1 hour/visit	7	\$595.00
Vehicle Charge	\$20.00 per trip	14 visits		14	\$280.00
				Subtotal	\$3,115.00
Asphalt Observations & Testing					
Engineering Technician	\$85.00 per hour	2 visits	2 hours/visit	4	\$340.00
Asphalt Control Test (Marshall, Oil, Rice, Voids)	\$630.00 per hour	2 tests		2	\$1,260.00
Asphalt Coring Crew	\$200.00 per hour	2 visit	6 hours/visit	12	\$2,400.00
Cores (Bult SpG, Density, Thickness)	\$50.00 per core	10 cores		10	\$500.00
Vehicle Charge	\$20.00 per trip	4 visits		4	\$80.00
				Subtotal	\$4,580.00
Report Review, Engineering & Management					
Administration/Invoicing	\$60.00 per invoice		3 invoices	3	\$180.00
Project Coordination/Report Review	\$80.00 per report		37 reports	37	\$2,960.00
				Subtotal	\$3,140.00
Total Estimated Fee					\$14,735.00
Not-to-Exceed Budget					\$18,000.00

Note: While the phases of construction have been separated for estimating purposes in the fee estimate spreadsheet, actual field testing services may be performed simultaneously on the various phases. As a result, total fees for construction materials testing services may be reduced if services are performed during the same trip to the site.

AGREEMENT FOR SERVICES

This **AGREEMENT** is between Yellowstone County - Finance ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Metra Park Back Lot project ("Project"), as described in Consultant's Proposal dated 03/08/2024 ("Proposal"), including but not limited to the Project Information section, unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Proposal, including but not limited to the Scope of Services section ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the Project.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Proposal, including but not limited to the Compensation section, unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties other than those who have executed Consultant's reliance agreement, subject to the prior approval of Consultant and Client.
- 6. LIMITATION OF LIABILITY. CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. PRIOR TO ACCEPTANCE OF THIS AGREEMENT AND UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION IN THE FORM OF A SURCHARGE TO BE ADDED TO THE AMOUNT STATED IN THE COMPENSATION SECTION OF THE PROPOSAL. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S), OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL LIABILITY POLICY.**
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's Services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of Services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. **EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$2,000,000 occ / \$4,000,000 agg); (iii) automobile liability insurance (\$2,000,000 B.I. and P.D. combined single limit); (iv) umbrella liability (\$5,000,000 occ / agg); and (v) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

- 10. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.**
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client shall cause all tests and inspections of the site, materials, and Services performed by Consultant to be timely and properly scheduled in order for the Services to be performed in accordance with the plans, specifications, contract documents, and Consultant's recommendations. No claims for loss or damage or injury shall be brought against Consultant by Client or any third party unless all tests and inspections have been so performed and Consultant's recommendations have been followed. Unless otherwise stated in the Proposal, Client assumes sole responsibility for determining whether the quantity and the nature of Services ordered by Client is adequate and sufficient for Client's intended purpose. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by Services not performed due to a failure to request or schedule Consultant's Services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods. The extension of unit prices with quantities to establish a total estimated cost does not guarantee a maximum cost to complete the Services. The quantities, when given, are estimates based on contract documents and schedules made available at the time of the Proposal. Since schedule, performance, production, and charges are directed and/or controlled by others, any quantity extensions must be considered as estimated and not a guarantee of maximum cost.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of the testing procedures (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Materials unless specifically provided in the Services, and that Client is responsible for directing such disposition. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site and Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's performance of Services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Unless otherwise stated in the Proposal, Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site. In addition, Consultant retains the right to stop work without penalty at any time Consultant believes it is in the best interests of Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to unsafe site conditions. Client agrees it will respond quickly to all requests for information made by Consultant related to Consultant's pre-task planning and risk assessment processes.

Consultant:	<u>Terracon Consultants, Inc.</u>	Client:	<u>Yellowstone County - Finance</u>
By:	Date: <u>9/11/2024</u>	By:	<u>Kewan Bryan</u> Date: <u>1/13/25</u>
Name/Title:	<u>Eric R Reifschneider / Department Manager I</u>	Name/Title:	<u>Kewan Bryan, OMB Director</u>
Address:	<u>2110 Overland Ave Ste 124</u> <u>Billings, MT 59102-6440</u>	Address:	<u>METMAINBLDG P. O. Box 35015</u> <u>Billings, MT 59107</u>
Phone:	<u>(406) 656-3072</u> Fax: <u>(406) 656-3578</u>	Phone:	<u>(406) 256-2717</u> Fax: _____
Email:	<u>Eric.Reifschneider@terracon.com</u>	Email:	<u>jmatteson@yellowstonecountymt.gov</u>