

April 16, 2009

Terracon

Mr. Anthony Covacevich
City of Weslaco
255 South Kansas City Street
Weslaco, Texas 78596

Consulting Engineers & Scientists

Terracon Consultants, Inc.
1506 Mid-Cities Drive
Pharr, Texas 78577
Phone 956.283.8254
Fax 956.283.8279
www.terracon.com

Attention: Mr. Anthony Covacevich

Telephone: (956) 447-3401
Fax: (956) 973-3128


Re: Best and Final Offer for
Asbestos Consulting Services
Old Weslaco Museum Building
515 South Kansas
Weslaco, Texas
Terracon Proposal No.H8809018

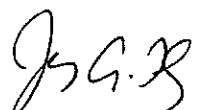
Mr. Anthony Covacevich:

In regards to Terracon Consultants, Inc. (Terracon) proposal no. H8809018 dated April 6, 2009 for Asbestos Consulting Services at the Old Weslaco Museum Building, the estimated cost of \$4,805 to conduct the project is our *Best and Final Offer*.

We appreciate the opportunity to provide this proposal and look forward to working with you on this project. If you should have any questions or comments, please call us to discuss.

Sincerely,
TERRACON CONSULTANTS, INC.


Mr. Eloy Palacios
Licensed Asbestos Inspector
License No. 602730
epalacios@terracon.com


for Robert N. Dalton
TDSHS Individual Asbestos Consultant
License No. 105089
rndalton@terracon.com

APR 16 2009
Qv.

**CONTRACT AGREEMENT FOR
ASBESTOS ABATEMENT SERVICES**

BETWEEN

COUNTY OF HIDALGO- URBAN COUNTY PROGRAM

and

TERRACON CONSULTING ENGINEERS & SCIENTISTS

PREPARED ON (4-21-09)

For

**GEOTECHNICAL ENGINEERING &
ASBESTOS ABATEMENT SERVICES
(WESLACO – Year 21 (2008) PUBLIC FACILITY IMP.
(LIBRARY COMMONS REMOVAL OF ASBESTOS)**

**CONTRACT AGREEMENT
FOR
GEOTECHNICAL ENGINEERING &
ASBESTOS ABATEMENT SERVICES
(WESLACO – Year 21 (2008) PUBLIC FACILITY IMP.
(LIBRARY COMMONS REMOVAL OF ASBESTOS)**

**STATE OF TEXAS
COUNTY OF HIDALGO**

PART I – PARTIES AND SERVICES

This agreement is made on APRIL 21, in the year 2009, between County of Hidalgo-Urban County Program, hereinafter called the **Client**, and Terracon Consulting Engineers & Scientists hereinafter called the **Laboratory**, for **Geotechnical and Asbestos Abatement Services**, hereinafter called the **Services**.

Hidalgo County-Urban County Program has received CDBG funds from the U.S. Dept. of Housing and Urban Development to be used by Urban County Participants. It is understood and agreed that the Party's obligation under this Agreement is contingent upon the actual receipt of adequate federal funds to meet the liabilities under this Agreement.

The **Laboratory** agrees to compliance with the following Executive orders, Titles and Program Regulations, including any additional requirements that may be set forth by the Party.

- a. Title VI of the Civil Rights Act - requires that no one may be denied access to benefits from projects which receive federal assistance.
- b. Section 109 of the Housing and Community Development Act of 1974 - Nondiscrimination related to benefits from projects funded specifically under Title I of the Act.
- c. Section 3 of the HUD Act of 1968 - requires that maximum effort be made to provide employment, training, and business opportunities to low income families and/or residents of the project area.
- d. The **Laboratory** shall give the United States Department of Housing and Urban Development, the Inspector General, the Comptroller General of the United States, the Auditor of the State of Texas, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by **Laboratory** pertaining to this Agreement. Such rights to access shall continue as long as the records are

retained by Engineer. Engineer agrees to maintain such records in an accessible location for a period of three (3) years.

- e. Executive Order 11246 (paragraph a-c for contracts under \$10,000; paragraphs a-g for contracts over \$10,000) - Equal Employment Opportunity.

Executive Order 11246. Executive Order 11246 and the regulations issued pursuant thereto (24 CFR Part 130) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federal or federally assisted contracts. Such consultants or subcontractors shall take affirmative action to ensure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination rates of pay or other forms of compensation and selection for training and apprenticeship.

Equal Employment Opportunity for Activities and Contracts not Subject to Executive Order 11246, as amended. In carrying out the program, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The **Laboratory** shall take affirmative action to ensure that applicants for employment are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or other forms of compensation; and selection for training, including apprenticeship. The Engineer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this paragraph in all of its contracts for program work and will require all of its consultants for such work to incorporate such requirements in all subcontracts for program.

Interest of Certain Federal Officials: No member of or Delegate to the Congress of the United States and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

Interest of Members, Officers, or Employees of Public Body, Member of Local Governing Body, or other Public Officials: No member, officer, or employee of the County or City, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure for one year thereafter, shall have any interest, direct or indirect, to be performed in connection with the program assisted under the Agreement. The **Laboratory** shall incorporate or cause to be incorporated in all such interest pursuant to the purpose of this Section.

PART II – FEES

The fees for **Services** rendered shall be in accordance with the attached Attachment B, entitled “**Schedule of Fees for Professional Services.**”

PART III – TERMS AND CONDITIONS

ARTICLE 1. SERVICES – LABORATORY SHALL:

- 1.0 Perform Geotechnical & Construction Material Testing Services for Hidalgo County –Urban County Program as identified in Attachment A “Scope of Services”.
- 1.1 Act for the **Client** in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with the standards of the Profession.
- 1.2 Provide only those **Services** that, in the opinion of the **Laboratory**, lie within the technical and professional area of expertise of the **Laboratory** and which **Laboratory** is adequately staffed and equipped to perform.
- 1.3 Perform all technical services under the general direction of a Licensed Professional Engineer registered in the State of Texas and in substantial accordance with the basic requirements of the appropriate Standards of the American Society for Testing and Materials, where applicable, or other standards as designated by the **Client**.
- 1.4 Promptly submit all formal construction materials test reports for all tests, observations and services performed indicating where applicable, compliance with project specifications or other documents. Such reports shall be complete and factual. Such reports shall cite the test performed, methodology employed, test values obtained, and locations where tests were performed.
- 1.5 Promptly submit formal geotechnical reports for geotechnical explorations requested by the **Client**. Such reports shall contain a site plan with the boring locations indicated, boring logs, a report of the results of laboratory testing, and contain design recommendations pertaining to the planned construction.
- 1.6 Employ testing equipment and machines which have been calibrated within a period not exceeding twelve (12) months from the time of use by devices of accuracy traceable to the National Institute for Standards and

Technology (NIST) of the United States Department of Commerce, and submit upon request by the Client, documentation of such calibration.

- 1.7 Report Distribution and Ownership
 - 1.7.1 Laboratory will consider all reports to be the confidential property of the **Client**, and will distribute reports only to those persons, organizations or agencies as designated in writing by the **Client** and its authorized representative.
 - 1.7.2 **Client** acknowledges the **Laboratory's** documents as instruments of Professional service. Nevertheless, the plans and specifications prepared under this agreement shall become the property of the **Client** upon completion of the work and payment will be made in full of all monies due to the **Laboratory**. The **Client** shall not re-use or make any modification to the reports without prior written authorization of the **Laboratory**. Any unauthorized use reuse of the documents will be at the **Client's** sole risk.
- 1.8 **Laboratory** will retain all pertinent records relating to services performed for a period of 5 years following submission of all reports, during which period the records will be made available to the **Client** within a reasonable time.

ARTICLE 2. CLIENT'S RESPONSIBILITIES-Client or its authorized representative shall:

- 2.1 Provide the **Laboratory** with all the plans, specifications, addenda's change orders, approved shop drawings and other information for the proper performance of the **Laboratory**.
- 2.2 Designate in writing those persons or firms who are authorized to receive copies of **Laboratory's** inspection and test reports.
- 2.3 Advise **Laboratory** sufficiently in advance of any operations so as to allow for assignment of personnel by the Laboratory for completion of the required service. Such advance notice shall be in accordance with that established by mutual agreement of the **Client** and **Laboratory**.
- 2.4 Direct any Contractor where testing is to take place, either by construction contract or direct written order to:
 - (a) Secure and deliver to **Laboratory**, at no cost to **Laboratory**, preliminary representative samples of materials it proposes to use which require laboratory testing.

- (b) Furnish such casual labor and all facilities needed by the Laboratory to obtain and handle samples at the testing site and to facilitate the specified inspection of tests.
- (c) Provide and maintain for the use of the **Laboratory**, adequate space at the material testing site for safe and secure storage and proper curing of test specimens that must remain on the project site prior to laboratory testing.

ARTICLE 3. GENERAL CONDITIONS

- 3.1 **Laboratory**, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities with regard to construction materials testing customarily vested in applicable project architects or engineers, or any other design professionals, agencies or authorities.
- 3.2 **Laboratory** shall not be responsible for acts of omissions of any party or parties involved in the design of any project where material testing is to take place or the failure of any Contractor or Subcontractor to construct any aspect of such project in accordance with recommendations contained in any correspondence or verbal recommendation issued by **Laboratory**.
- 3.3 **Laboratory** is not authorized to revoke, alter or relax, enlarge or release any requirements of the Client's specifications or other documents nor to approve or accept any portion of the work, unless specifically authorized in writing by Client or his authorized representative. **Laboratory** shall not have the right of rejection or the right to stop the work, except for such periods as may be required to conduct sampling, testing, or inspection of operations covered by the **Agreement**.
- 3.4 Either party may terminate this **Agreement** on thirty (30) days written notice or by mutual agreement. If this **Agreement** is terminated by either party, **Laboratory** shall be paid in full for all services performed through the termination date, and the **Client** shall be provided with a complete report of the results of tests and analysis conducted prior to termination of **Agreement**.
- 3.5 Neither **Client** nor **Laboratory** may delegate, assign, sublet or transfer his duties or interest in this Agreement without the written consent the other party.

- 3.6 The only warranty made by **Laboratory** in connection with its service performed hereunder is that it will use the degree of care and skill as set in Article I above. No other warranty, expressed or implied, is made or intended for services provided hereunder or furnishing oral or written reports of findings made.
- 3.7 Successors and Assigns.
- 3.7.1 **Client** and **Laboratory** each binds themselves and their partners, successors, executors, administrators, assign legal representative to the other party to this **Agreement** and to the partners, successors, executors, administrator, assigns and legal representative of such other party in respect to all covenants, agreements, and obligations of this **Agreement**.
- 3.7.2 Neither **Client** or **Laboratory** shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this **Agreement** without the written consent of the other except as stated in paragraph 3.7.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an Assignment, no assignment will release or discharge the assignor from any duty or responsibility under this **Agreement**. Nothing contained in this Paragraph shall prevent **Laboratory** from employing such independent Consultants, associates and subcontractors, as he may deem appropriate to assist him in the performance of services hereunder.
- 3.7.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the **Client** and **Laboratory**.
- 3.8 Non Binding Mediation
- 3.8.1 In the event of a dispute or claim between **Laboratory** and **Client** arising out of or related to this Agreement, both parties agree to submit to a Non-Binding Mediation with the hope of achieving a satisfactory resolution prior to proceeding with formal litigation processes, including the filing of claims against parties (unless a failure to file causes waiver or loss of rights or subsequent action).
- 3.8.2 Such Non-Binding Mediation shall be conducted by a mediator and rules agreed to by both parties. Both parties shall mediate through a selected and mutually agreed to senior representative of each respective party.
- 3.8.3 Both the **Laboratory** and **Client** will bind their respective consultants, contractors, vendors, fabricators, and suppliers involved in this Project to contracts which will provide similar Non-Binding Mediation as the

primary dispute resolution method to other agreements.

3.9 Indemnity

3.9.1 The Owner will require the Laboratory, in connection with work produced under this agreement, to hold harmless and indemnify the Client, and each of its officers, agents and employees, from any and all liability claims, losses, or damage arising out of or alleged to arise from Laboratory's negligence in the performance of the work described in this agreement.

ARTICLE 4. INSURANCE

The **Laboratory** shall obtain and keep in force during the term of its engagement on the Project, the insurance as follows:

- 4.1 Automobile liability insurance policy with limits of at least Three Hundred Thousand Dollars (\$300,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Coverage should include injury to or death of persons and property damage claims with limits up to Five Hundred Thousand Dollars (\$500,000.00) arising out of the services provided to Hidalgo County-Urban County Program.
- 4.2 Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;
- 4.3 A Five Hundred Thousand Dollar (\$500,000.00) Comprehensive General Liability Insurance Policy providing additional coverage to all underlying liabilities of County consistent with potential exposure of County under the Texas Tort Claims Act;
- 4.4 Workers Compensation Insurance in amount established by Texas law, under the bidder is specifically exempted from the Texas Worker's Compensation Act, Texas Labor Code Chapter 401, et. seq.
- 4.5 All insurance policies must be written by an insurance company or companies acceptable to the Party.
- 4.6 Professional liability insurance policy with limits of at least One Million Dollars (\$1,000,000.00) per occurrence, or limited to claims made, include at least a five (5) year extended reporting period.

ARTICLE 5. PAYMENTS:

5.1 **Client** will pay **Laboratory** for Services rendered while work is in progress as executed through a lump sum fee For each **Request for**

Payment, the **Laboratory** shall prepare and submit to the **Client** monthly progress reports in sufficient detail to support the progress of the work done.

ARTICLE 6. EXTENT OF AGREEMENT:

- 6.0 After execution of this **Agreement**, the **Laboratory** shall proceed with work, only as authorized by the **Client** through a formal **NOTICE TO PROCEED**.
- 6.1 The **Agreement**, including these terms and conditions, represents the entire agreement between the **Client** and **Laboratory** and supercedes all prior negotiations, representations or agreements, written or oral. The **Agreement** may be amended only by written instrument signed by **Client** and **Laboratory**.
- 6.2 The **Agreement** shall remain in force for the duration of the project from the date this agreement is signed by all parties.

ARTICLE 7. APPLICABLE LAW:

- 7.1 The laws of the State of Texas shall govern the **Agreement**. Venue shall be in County of Hidalgo.

ARTICLE 8. ATTORNEY FEES:

- 8.1 In the unlikely event that a dispute occurs and is litigated, or a cause of action in the law or equity is filed concerning the operation, construction interpretation or enforcement of this agreement, the losing party shall bear the cost of the attorney's fees incurred by the prevailing party and any and all costs applicable thereto, including but not limited to court costs, deposition fees, and expert witness fees, out of pocket expenses and travel expenses which are incurred by the prevailing party.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

LABORATORY:

CLIENT:

Jorge A. Flores

Diana R. Serna, UCP Director

Terracon Consulting Engineers & Scientists
1506 Mid-Cities Drive
Pharr, Texas 78577

Hidalgo County Urban County Program
1916 Tesoro Blvd.
Pharr, TX 78577

APPROVED AS TO FORM:

BY: STEVE CRAIN- ATLAS & HALL

DATE: : 2-19-2008



April 6, 2009

Mr. Anthony Covacevich
City of Weslaco
255 South Kansas City Street
Weslaco, Texas 78596

Consulting Engineers & Scientists

Terracon Consultants, Inc.
1506 Mid-Cities Drive
Pharr, Texas 78577
Phone 956.283.8254
Fax 956.283.8279
www.terracon.com

Attention: Ms. Sylvia M. Martinez

Telephone: (956) 447-3401
Fax: (956) 973-3128

Re: Asbestos Consulting Services
Old Weslaco Museum Building
515 South Kansas
Weslaco, Texas
Terracon Proposal No.H8809018

Mr. Anthony Covacevich:

Terracon Consultants, Inc. (Terracon) is pleased to submit this proposal to provide asbestos consulting services for the abatement phase of the project at the above referenced location. The scope of services is intended to meet state and federal requirements for asbestos abatement projects conducted prior to renovation/demolition operations in public buildings.

Terracon understands the work will include the removal of asbestos-containing 12" X 12" floor tile (tan/light green), vinyl sheathing and mastic (yellow), sink undercoat, 12" X 12" floor tile (light green), ceiling texture, brick mastic, and window glaze from the old Weslaco Museum. The asbestos-containing materials (ACM) were identified as part of an asbestos inspection conducted by others. Terracon proposes to prepare abatement plans and specifications, provide assistance in obtaining asbestos abatement bids, provide air monitoring/inspection/project management services during abatement, and prepare project closeout documents following abatement operations as part of the scope of work in this proposal.

PROPOSED SCOPE OF SERVICES

Task 1 – Asbestos Abatement Design

Terracon will develop a site specific set of asbestos abatement plans and specifications for the removal and disposal of the identified ACM from the facilities listed above. The specifications will be prepared by a TDSHS Licensed Individual Asbestos Consultant in accordance with current local, state and federal regulations. Three (3) copies of the

documents will be provided to the Client one of which will be provided to the Asbestos Abatement Contractor selected to perform the abatement work. The specifications will define abatement practices, procedures and inspection protocols.

Task 2 – Project Implementation

Terracon will provide a Licensed Asbestos Consultant and Technician(s), who will be available for periodic inspections and air sampling throughout the duration of the removal project. The asbestos Consultant will coordinate operations for the Client and provide abatement project management for the duration of the project. Terracon will also review all pre-job submittals pertaining to asbestos abatement prior to the beginning of the project. Critical visual inspections conducted prior to the start of work and at the completion of abatement, prior to encapsulation, will be conducted by the Consultant or a qualified Project Manager delegated by the Consultant. Air monitoring will be conducted throughout the abatement activities and following the completion of abatement operations. It is estimated that the on-site visual inspections and air monitoring services provided on the project will require approximately 5 days on-site for removal of the asbestos-containing materials identified in the building(s). The air samples collected prior to and during the work periods will be analyzed on-site or off-site, as required, by Phase Contrast Microscopy (PCM) in accordance with the National Institute of Occupational Safety and Health (NIOSH) Method 7400. Final clearance air sampling will be conducted utilizing PCM methods as required by the Texas Asbestos Health Protection Rules (TAHPR).

Task 3 – Final Project Documentation

Once the project is completed, Terracon will prepare a final project report and provide two (2) copies to the Client. Additional report copies can be prepared for a cost of \$50 per copy. The final project report will include a description of the project, asbestos monitoring results, and a review of the abatement contractor's documentation. Review of the abatement contractor's documentation will include waste disposal manifests, worker documentation, OSHA monitoring results, and all project submittals.

PROJECT BUDGET

The project budget is based on the anticipated scope of work as outlined above. Task 1 is presented as a lump sum charge. Tasks 2 through 4 are presented as time and material charges, which will be based in part on the duration of the abatement project as proposed by the selected abatement contractor. The following is an estimate based upon available data and will not be exceeded without Client approval. Work involved in the project may be authorized on a Task by Task basis.

| | | |
|---|------------------------|--------------------|
| • Task 1 – Asbestos Abatement Design Documents | | |
| Abatement Design Documents (<i>Lump Sum</i>) | | \$ 850.00 |
| • Task 2 – Project Implementation | | |
| On-site Inspection/Air Monitoring (includes equipment, and collection and analysis of up to ten PCM air samples/day), \$55.00/hour (<i>estimate</i> 40 hours, ~5 days) | | \$ 2,200.00 |
| • Task 3 - Final Project Documentation (closeout) | | |
| Report Preparation, \$75.00/hour (estimate 7 hours) | | <u>\$ 525.00</u> |
| | Estimated Total | \$ 3,575.00 |

The Client should also be aware that the TDSHS will assess notification fees directly to the Owner based on the quantity of asbestos removed. The fee for this current project will be approximately \$ 1,230.00.

Terracon's invoice will be submitted to the Client upon completion of the proposed services. **The Client will only be charged for actual hours charged to the project during the abatement phase.** If conditions are encountered at the site which requires significant changes in the scope of services or a significant increase in the anticipated number of hours necessary which will increase the cost of the project, you will be contacted for discussion and approval of such changes before we proceed.

CONDITIONS

Items to be provided by the Client include:

- The legal right-of entry to conduct the assessment.
- Any restrictions or special access requirements regarding the site shall be made known to Terracon prior to site mobilization.
- Any known environmental conditions at the site (i.e., hazardous materials or processes, specialized protective equipment requirements, unsound structural members, etc.) shall also be communicated to Terracon prior to site mobilization.
- A diagram of the suite layout such as a scaled architect's drawing or construction drawing (if available) will be provided to Terracon.
- Reliance authority to utilize the provided asbestos survey data shall be granted to Terracon.

GENERAL COMMENTS

The analysis, comments and recommendations presented in the written report will be based on the information collected as discussed in this proposal. If requested by the Client, Terracon may provide a verbal report prior to completion of a final written report. The content of the final written report takes precedence over any verbal reports which may be provided. Please note that Terracon does not warrant the work of laboratories, regulatory agencies or other third parties supplying information used in the preparation of the report. Terracon cannot guarantee a building or building components to be asbestos free.

This proposal has been prepared for City of Weslaco for use on the referenced project. The report prepared as part of the services herein shall be for the exclusive use and reliance of City of Weslaco and shall not be conveyed to third parties without prior written authorization from them and Terracon.

This proposal may be accepted by executing the attached Agreement for Services and returning the executed copy along with this proposal to Terracon. The terms, conditions, and limitations stated in the Agreement for Services and this proposal shall constitute the exclusive terms and conditions and services to be performed for this project. This proposal is valid only if authorized within thirty (30) days from the proposal date.

We appreciate the opportunity to provide this proposal and look forward to working with you on this project. If you should have any questions or comments regarding this proposal, please call.

Sincerely,
TERRACON CONSULTANTS, INC.



Eloy Palacios
Licensed Asbestos Inspector
License No. 602730
epalacios@terracon.com



Robert N. Dalton
TDSHS Individual Asbestos Consultant
License No. 105089
rndalton@terracon.com

Attachments: Agreement for Services

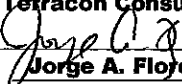
AGREEMENT FOR SERVICES

This **AGREEMENT** is between City of Weslaco ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Old Weslaco Museum Building project ("Project"), as described in the Project Information section of Consultant's Proposal dated April 6, 2009 ("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.** 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.
- 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.
- 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 RISKS SO, 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 \$10,000 OR ITS 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 REGARDLESS OF 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 defend, indemnify, and hold harmless the other, their agents, and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are 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. 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) 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.

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- 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 notifying and scheduling Consultant so Consultant can perform these Services. Consultant shall not be responsible for the quality and completeness of contractor's work or their adherence to the project documents, and Consultant'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. Consultant will not supervise or direct the work performed by 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.
- 18. Termination.** 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.

Consultant: **Terracon Consultants, Inc.**
By:  Date: 04/06/2009
Name/Title: Jorge A. Flores, Office Manager
Address: 1506 Mid Cities Drive
Pharr, Texas 78577
Phone: 956.283.8254 Fax: 956.283.8279

Client: City of Weslaco
By: _____ Date: _____
Name/Title: Mr. Anthony Covacevich
Address: 255 South Kansas City Street
Weslaco, Texas 78596
Phone: 956.447.3401 Fax: 956.973.3128

Agreement Reference Number (Terracon Proposal or Project Number): H8809018

DISTRIBUTION SHEET

Thank you for choosing Terracon Consultants, Inc. to provide these services. Please fill out below the pertinent information below so that we may expedite report distribution, project correspondence and invoice(s) to appropriate person (s). If you have any questions please do not hesitate to contact our office.

Project Name: Old Weslaco Museum Building

Client
Copies _____ Firm _____
Address _____
Attn: _____ P _____ F _____
Email: _____

Invoice (do not complete if same as client)
Copies _____ Firm _____
Address _____
Attn: _____ P () _____ F () _____
Email: _____

Report Distribution (Clients, Architects, Engineers, Contractors, etc...)
Copies _____ Firm _____
Address _____
Attn: _____ P () _____ F () _____
Email: _____

Copies _____ Firm _____
Address _____
Attn: _____ P () _____ F () _____
Email: _____

Copies _____ Firm _____
Address _____
Attn: _____ P () _____ F () _____
Email: _____

Copies _____ Firm _____
Address _____
Attn: _____ P () _____ F () _____
Email: _____

Copies _____ Firm _____
Address _____
Attn: _____ P () _____ F () _____
Email: _____

If you need more room or would like to send other pertinent information please provide on the back of this sheet. Thank you for your time and concern to this matter.

