

October 12, 2011

County Judge Mike Brown
Tom Green County
122 West Harris
San Angelo, Texas 76903

Phone: 325-653-3318
Email: mike.brown@co.tom-green.tx.us

Re: Fungal Contamination Evaluation
112 West Beauregard, Basement
San Angelo, Texas 76903
Terracon Proposal P94111198

Dear Judge Brown:

Terracon Consultants, Inc. (Terracon) is pleased to submit this proposal to conduct a fungal contamination evaluation at the above referenced location.

A. Project Information

The referenced property is the Tom Green County Courthouse. Suspect fungal contamination was observed in the basement on exterior walls, and adjacent intersecting walls during a recent hazardous materials survey conducted by Terracon. Terracon has been requested to evaluate the suspect fungal contamination and provide an appropriate remedial response in accordance with the Texas Mold Assessment and Remediation Rules (TMARR).

B. Scope of Services

The work will be performed under the attached Agreement for Services. Terracon's licensed Mold Assessment Consultant(s) will perform a visual inspection of the basement, and collect surface samples as needed to confirm the presence of fungal contamination. A final report will be issued documenting the results of the fungal contamination evaluation in accordance with the TMARR. Additionally, a site specific Fungal Remediation Protocol will be prepared if the visual inspection and analytical results indicate that the suspect fungal contamination is "regulated" by TMARR and requires remediation by a licensed Mold Remediation Contractor.

Methodology

A visual inspection of the indoor environment will be conducted in general accordance with Texas Department of State Health Services (TDSHS), Environmental Protection Agency (EPA) and American Conference of Governmental Industrial Hygienist (ACGIH) established protocols. The objective of the visual inspection will be the identification of potential moisture concerns and/or related fungal growth within readily accessible areas of the referenced



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Geotechnical



Environmental



Construction Materials



Facilities

basement. Suspect building materials will be sampled by transparent tape lift and analyzed by bright field microscopy in accordance with ACGIH recommended protocols. Up to 6 tape lift samples may be collected. Mature, sporulating fungi will be microscopically identified to genus based on morphology of reproductive structures. The samples will be submitted under chain of custody (COC) to a Texas state licensed Mold Analysis Laboratory for analysis.

Moisture content of building materials will be evaluated with a digital moisture meter; Model DT-100, from Professional Equipment Company, or equivalent.

Schedule

The above scope of services may begin within seven (7) working days following receipt of the executed Supplemental Agreement of Services.

Conditions

Items to be provided by the Client include:

- The legal right-of-entry to conduct the assessment.
- A building management representative during inspections of occupied areas.
- 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.

Report

Terracon will prepare a written report describing the sampling methodology and the results of the evaluation. Terracon will compare sampling results and site measurements to consensus standards and guidelines and provide recommendations for additional assessment or remedial actions considered warranted by sampling results and site observations. A site specific Fungal Remediation Protocol will be prepared and included with the final report. Unless otherwise instructed, two (2) copies of the final report will be submitted to the address indicated herein. The final report will be submitted to the client within ten (10) working days after receipt of the analytical results.

Reliance

The final report will be prepared for the exclusive use and reliance of Tom Green County. Reliance by any other party is prohibited without the written authorization of Tom Green County, and Terracon.

If the client is aware of additional parties that will require reliance on the final report, the names, addresses and relationship of these parties should be provided for Terracon approval prior to the time of authorization to proceed. Terracon will grant reliance on the final report to those approved parties upon receipt of a fully executed Reliance Agreement (available upon request). If, in the future, the client and Terracon consent to reliance on the moisture intrusion report by a third party, Terracon will grant reliance upon receipt of a fully executed Reliance Agreement and receipt of an additional fee of \$250.00 per relying party.

Reliance on the final report by the client and all authorized parties will be subject to the terms; conditions and limitations stated in the Agreement for Services (and sections of this proposal incorporated therein), the Reliance Agreement, and the report.

C. COMPENSATION

The services described above will be performed for a lump sum fee of \$ 3,450.00. This lump sum fee estimate includes mobilization/travel, onsite labor, laboratory fees, a site specific Fungal Remediation Protocol, and final report preparation.

If this Scope of Services meets with your approval, work may be initiated by returning an original copy of the signed proposal to our Dallas, Texas office. Project initiation may be expedited by faxing a copy of the signed Agreement for Services to Robert Garrison at (214) 630-7070 or by email to ragarrison@terracon.com.

The terms, conditions and limitations stated in the Agreement for Services (and sections of this proposal incorporated therein) shall constitute the exclusive terms and conditions and services to be performed for this project. This proposal is valid only if authorized within sixty (60) 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 have any questions or comments regarding this proposal or require additional services, please give me a call.

Sincerely,
Terracon Consultants, Inc.


Robert Garrison, CIAQP
Department Manager, Indoor Air Quality


Kyle Burroughs
Principal

Attachment: Agreement for Services

AGREEMENT FOR SERVICES

This **AGREEMENT** is between Tom Green County ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Tom Green County Courthouse Basement Fungal Contamination project ("Project"), as described in the Project Information section of Consultant's Proposal dated 10-12-2011 ("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. When Terracon subcontracts to other individuals or companies, then Terracon will collect from Client on the subcontractors' behalf. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address 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) 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: [Signature] Date: **10-12-2011**
 Name/Title: **Robert Garrison, Department Manager IAQ**
 Address: **8901 Carpenter Freeway, Suite 100**
Dallas, Texas 75247
 Phone: **214.630.1010** Fax: **214.630.7070**

Client: **Tom Green County**
 By: [Signature] Date: **10-12-2011**
 Name/Title: **County Judge Mike Brown**
 Address: **122 West Harris**
San Angelo, Texas 76903
 Phone: **325-653-3318** Fax: _____

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