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AGENDA ITEM REQUEST FORM

Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

AGENDA ITEM

Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement between Hays County and Terracon for services related to VCP certification on the Hays County Records Building.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-MISCELLANEOUS	May 14, 2013	\$12,650

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
Kennedy	INGALSBE	COBB

SUMMARY

Receiving the VCP certification through the TCEQ is the final step for closure of the environmental approvals for the Records Building.

May 6, 2013

Mr. Mark D. Kennedy
Chief - Civil Division
Hays County Criminal District Attorney's Office
Hays County, Texas
111 E. San Antonio, Suite 204
San Marcos, Texas 78666

(512) 393-2208
(512) 393-2246 (fax)
mark.kennedy@co.hays.tx.us

Re: Proposal for TRRP Investigation/Closure Services
137 N. Guadalupe Street, VCP # 2567
San Marcos, Texas
Terracon Project No. 96127483

Dear Mr. Kennedy:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal for environmental consulting services at the above referenced site. Based on the results from our recent meeting with the TCEQ VCP Section regarding best approaches to site closure and in response to their April 19, 2013 letter, it was determined that in order to obtain a Certificate of Completion (COC) for the entire site through the VCP, additional assessment and report preparation will be required. Currently, we are pursuing regulatory closure of the historic UST release using the current TCEQ Petroleum Storage Tank (PST) regulations (30 TAC§334). In order to obtain regulatory closure of the remaining historic potential sources on the site (the historic vulcanizing facility and battery/auto repair services), it will be necessary to utilize the TCEQ's Texas Risk Reduction Program (TRRP) rules (30 TAC§350). This will be done in conjunction with the 30 TAC§334 closure, which is being completed under our current agreement with Hays County.

The objectives of this proposal are to conduct the additional investigation and reporting required to obtain regulatory closure of the portions of the site regulated under the TRRP rules. An outline of Terracon's general scope of services, budget and schedule is provided in the following sections:

A. SCOPE OF SERVICES

Soil Borings

Following receipt of your Notice to Proceed and no later than 48 hours prior to intrusive activities, Terracon will contact a utility locator (1-800-245-4545) to arrange for underground utility locates at the above referenced site.

Terracon will develop a generic safety plan to be used by our personnel during field services. At this time, we anticipate that a USEPA Level D work uniform consisting of hard hats, safety glasses, protective gloves, and steel-toed boots will be required by all personnel in the work area. It may become necessary to upgrade this level of protection, at additional cost, while sampling activities

are being conducted in the event that petroleum or chemical constituents are encountered in soils or groundwater which present an increased risk for personal exposure.

A total of two borings will be advanced at the site, using a truck-mounted drilling rig and hollow stem auger drilling techniques. One boring will be advanced in the approximate downgradient direction of the site to a maximum depth of 30 feet bgs, five feet into groundwater, or auger refusal, whichever occurs first. The second boring will be advanced to further delineate the elevated constituents detected in the shallow soils at existing MW-2 location.

Drilling equipment will be cleaned using a high-pressure washer prior to beginning the project and before beginning each boring. Non-dedicated sampling equipment will be cleaned using an Alconox® detergent wash and potable water rinse prior to commencement of the project and between collection of each sample. **Drill cuttings will be stored temporarily on-site in labeled 55-gallon drums pending the results of the laboratory analyses.**

Soil samples will be collected continuously to document lithology, color and relative moisture content. In addition, the samples will be field screened using sensory methods and a photoionization detector (PID) to detect the presence of volatile organic compounds (VOCs).

Groundwater Monitoring Well

The deep boring will be converted to a groundwater monitoring well to evaluate on-site groundwater within the assessment area. The monitoring well will be constructed as follows:

- Installation of approximately 10 to 20 feet of 2-inch diameter, 0.010-inch machine slotted PVC well screen with a threaded bottom cap;
- Installation of 2-inch diameter, threaded, flush-joint PVC riser pipe to surface;
- Addition of pre-sieved 20/40 grade silica sand for annular sand pack around the well screen from the bottom of the boring to approximately 2 feet above the top of the well screen;
- Placement of 2 feet of hydrated bentonite pellets above the sand pack;
- Addition of cement/bentonite slurry to the surface; and,
- Installation of an 8-inch diameter, circular, bolt-down, steel, monitoring well cover with a locking well cap inset in a flush-mount, concrete well pad.

The monitoring well will be developed by surging and removing groundwater until fluids appear relatively free of fine-grained sediment. **Drill cuttings and development groundwater will be stored temporarily on-site in labeled 55-gallon drums pending the results of the laboratory analyses.**

Following development of the monitoring well and prior to groundwater sample collection, the well will be purged with a new disposable bailer or low-flow sampling equipment. The well will be purged of a minimum of three well casing volumes of groundwater, until the monitoring well formation fails to

recharge, (i.e., well runs dry) or consistent values (i.e., less than 10% variance between consecutive readings) are obtained for pH, temperature and conductivity. Subsequent to sufficient recharge, one groundwater sample will be collected from each of the wells utilizing a new, disposable, polypropylene bailer or low-flow sampling techniques. Additionally, the top of each monitor well will be surveyed to common datum in order to facilitate the calculation of groundwater elevations, flow directions and gradients.

Sampling Program

Terracon's soil and groundwater sampling program will consist of the following:

- Collection of two soil samples from each boring. A sample will be collected from the upper 5-foot interval, and the second sample will be collected from the zone exhibiting the highest VOCs based on field screening, the capillary fringe zone, or the bottom of boring;
- If groundwater is encountered, one groundwater sample will be collected from the new groundwater monitoring well and the two existing monitoring wells.

The soil and water samples will be collected and placed in laboratory prepared containers, labeled, and placed on ice in a cooler which will be secured with a custody seal. The samples and completed chain-of-custody forms will be submitted to the selected analytical laboratory on a normal turnaround time basis (5 to 7 business days).

Laboratory Analytical Program

The soil and groundwater samples collected from the site will be analyzed for VOCs using EPA Method SW-846 #8260, SVOCs using EPA Method SW-846 #8270, RCRA metals using EPA Methods SW-846 #6020/7470, and total petroleum hydrocarbons (TPH) using Texas Method 1005.

Task 2 – Preparation of Affected Property Assessment Report (APAR)

As previously indicated, site closure of the remaining historic potential source areas will be conducted in accordance with 30 TAC §350 (TRRP) regulations. This will require the preparation of an Affected Property Assessment Report (APAR). The APAR is a specially formatted TCEQ report specifically designed to facilitate reporting site data following the guidelines and regulations contained in the TRRP rule. Data collected and reported for the PST closure via the Assessment Report Form (ARF), including the existing soils/groundwater data, the water well survey and the walking receptor survey will also be used to complete the APAR. The APAR will also include the new soil/groundwater data collected as part of this scope of work.

B. PROJECT SCHEDULE

Terracon is prepared to commence work immediately following notification to proceed. It is anticipated that the additional field work can be completed within 1 to 2 days. The new samples will

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be analyzed on a normal turnaround, with data available within 5 to 7 business days. The APAR can be completed within 2 to 3 weeks following receipt of the analytical data.

C. COMPENSATION

The Scope of Services outlined in this proposal will be performed on a time and materials basis, not to exceed \$12,650.00. If, as a result of these services, additional work is required outside the scope of this proposal, you will be contacted, and upon request, proposed costs for additional work will be provided. Client authorization will be obtained prior to commencement of any additional work outside the scope of this proposal. Estimated project costs are summarized in the attached Table 1.

Drilling, laboratory, and other direct costs include a 15% handling fee. The project cost summary is based on the scope of services outlined in this proposal. This proposal and cost estimate were prepared based on the following assumptions:

- The client will provide to Terracon, prior to mobilization, legal right of entry to the site (and other areas if required) to conduct the scope of services;
- Work can be performed during normal business hours (Monday through Friday, 7:00 am to 7:00 pm). If work is performed outside business hours, an additional 15% will be added to the field labor;

D. AUTHORIZATION

This project may be conducted under the Terms and Conditions of the attached Agreement for Services. This proposal is valid only if authorized within 90 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.

A handwritten signature in black ink, appearing to read "Russell C. Ford". The signature is written in a cursive, flowing style.

Russell C. Ford, P.G.
Senior Associate

Attachment: Agreement for Services



TABLE 1
COST ESTIMATE SUMMARY
TRRP CLOSURE
137 N. Guadalupe Street
San Marcos, Texas

DESCRIPTION	UNIT	UNIT COST	TOTAL COST
Subcontractor Costs			
Drilling (1-30' monitoring well, 1-15' soil boring)	Lump	Lump	\$2,300.00
Monitor Well Surveying	Lump	Lump	\$750.00
Laboratory Subcontractor (4 soil, 3 GW – TPH/VOCs//SVOCs, metals)	Lump	Lump	\$2,850.00
Labor			
Senior Principal/APR Review	2 hrs	\$150/hr	\$300.00
Project Manager	10 hrs	\$125/hr	\$1,250.00
Staff Hydrogeologist	50 hrs	\$95/hr	\$4,750.00
Drafting/Word Processor	5 hrs	\$55/hr	\$275.00
Supplies/Equipment	Lump	Lump	\$175.00
ESTIMATED TOTAL COST			\$12,650.00

OPTIONAL COSTS:


- On-site dispersal of IDW** – \$50.00
- Off-site disposal of IDW at authorized landfill (Class II)** – \$450.00
- Well Plugging** – \$250.00

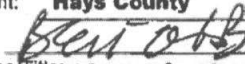
AGREEMENT FOR SERVICES

This **AGREEMENT** is between Hays County ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the 137 N Guadalupe project ("Project"), as described in the Project Information section of Consultant's Proposal dated May 6, 2013 ("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 Consultant subcontracts to other individuals or companies, then Consultant 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 the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. 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. 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 \$25,000 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 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 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. EXCEPT FOR THE STANDARD OF CARE STATED ABOVE, 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:  Date: 5/6/13
Name/Title: **Russell C. Ford, P.G.**
Address: **5307 Industrial Oaks Blvd., Suite 160**
Austin, Texas 78735
Phone: **512.442.1122** Fax: **512.442.1181**

Client: **Hays County**
By:  Date: 5-14-2013
Name/Title: **HAYS COUNTY JUDGE / BRENT COBB, M.D.**
Address: **111 East San Antonio Street**
San Marcos, Texas 78666
Phone: **512 393-2208** Fax: **512 393-2246**

Reference Number: 96127483