



## INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Terracon Consultants, Incorporated**, a Delaware corporation ("Contractor"), to be effective for all purposes November 11, 2020.

**WHEREAS**, the County Purchasing Agent determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 21-07 (the "RFP") on June 25, 2020, requesting proposals for Materials Testing and Abatement, as described in the RFP; and

**WHEREAS**, Contractor timely responded to the RFP by submitting a response dated July 29, 2020 ("Contractor's Response");

**WHEREAS**, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the services listed in the RFP; and

**WHEREAS**, the County Council, as part of a multiple source award, approved Agreement Nos. AGR21-07a and AGR21-07b at a public meeting held on October 20, 2020; and

**WHEREAS**, the County Council, as part of a multiple source award, approved this Agreement at a public meeting held on November 10, 2020; and

**WHEREAS**, the aggregate compensation between this Agreement and Agreement Nos. AGR21-07a and AGR21-07b are not to exceed the combined sum of TWO HUNDRED THOUSAND DOLLARS, (\$200,000.00), excluding New Mexico gross receipts taxes (NMGRT); and

**WHEREAS**, Contractor shall provide the Services, as described below, to County.

**NOW, THEREFORE**, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

### SECTION A. SERVICES:

1. Contractor, licensed in the State of New Mexico, shall provide County with on-call material testing services ("Services"). Services to be performed shall consist of the following:
  - a. Testing
    - 1) Test suspected Asbestos Containing Material ("ACM");
    - 2) Test suspected lead-based paint;
    - 3) Other Hazardous Materials as requested and required;
    - 4) Collection of materials;
    - 5) Securing of materials;
    - 6) Manifesting the materials for shipment;
    - 7) Sending the materials to the proper lab; and

- 8) Reporting on the findings of the lab.
2. County, at its sole discretion, shall determine when Contractor's Services are required and shall issue written Task Orders as needed. The Task Order process is as follows:
    - a. Preparation and work performed by the Contractor to prepare each of the task orders shall be considered as incidental to the contract and shall not be billable time under this agreement.
    - b. Each Task Order issued by County shall set out the tasks to be performed and the maximum amount County will pay for the services necessary to complete the tasks based on the agreed upon rates and the schedule for completing the task. Task Orders shall be approved after Contractor and County agree on the maximum amount payable for completion of the task and the schedule for completion. Task Orders shall be numbered sequentially (TO1, TO2, etc.).
    - c. Contractor shall not exceed the Task Order amount agreed upon without prior written approval of the County. Contractor's failure to reasonably estimate the cost of completing the task in the first instance shall not be a justification for modifying the Task Order. Modifications shall follow the previous nomenclature with letters following (TO1 REV 1, TO1 REV 2, etc.).
    - d. Contractor is authorized to begin work on any particular task only upon receipt of a Task Order approved in writing by the County. The Task Order may be as detailed as County finds necessary to assure appropriate oversight of the services to be performed by Contractor.
    - e. County may require Contractor to attend meeting with the County Council, County officials, as well as meetings with other entities and their officials. County shall attempt to identify such meetings for inclusion in any particular task order, and Contractor shall include the costs for attendance in the maximum amount of the Task Order based on the hourly rates prescribed in Exhibit A. In the event that it is determined after issuance of the Task Order that meeting attendance is required. Contractor shall prepare a modification to the Task Order for consideration by the County. Should the County not approve the modified Task Order adding additional meeting attendance, the Contractor shall have no obligation to attend the additional meetings.

**SECTION B. TERM:** The term of this Agreement shall commence November 11, 2020 and shall continue through October 20, 2024, unless sooner terminated, as provided herein.

**SECTION C. COMPENSATION:**

1. **Amount of Compensation.** County shall pay compensation for performance of the above Services in accordance with the Rate Schedule set out as Exhibit "A," attached hereto and made a part hereof for all purposes. Compensation for any one Task Order shall not exceed the approved Task Order amount, excluding NMGR. Compensation for all Agreements (AGR21-07a, AGR21-07b, and AGR21-07c) and Task Orders under this Agreement, shall not exceed a combined total of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) excluding NMGR.
2. **Monthly Invoices.** Contractor shall submit itemized invoices to County's Project Manager indicating Task Order number, Services performed, dates and times Services were performed, personnel providing Services, amount of compensation due, amount of any

NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

**SECTION D. TAXES:** Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

**SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL:** This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

**SECTION F. STANDARD OF PERFORMANCE:** Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

**SECTION G. DELIVERABLES AND USE OF DOCUMENTS:** All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

**SECTION H. EMPLOYEES AND SUB-CONTRACTORS:** Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

**SECTION I. INSURANCE:** Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this

Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
4. **Professional Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per claim. Professional Liability Insurance shall provide coverage for Services provided hereunder during the term of this Agreement and for a period of at least five (5) years thereafter.

**SECTION J. RECORDS:** Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

**SECTION K. APPLICABLE LAW:** Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

**SECTION L. NON-DISCRIMINATION:** During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

**SECTION M. INDEMNITY:** Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, to the extent, arising from Contractor's negligent performance hereunder or breach hereof and the negligent performance of Contractor's employees, agents, representatives and subcontractors.

**SECTION N. FORCE MAJEURE:** Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising

from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

**SECTION O. NON-ASSIGNMENT:** Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

**SECTION P. LICENSES:** Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

**SECTION Q. PROHIBITED INTERESTS:** Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

**SECTION R. TERMINATION:**

1. **Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

**SECTION S. NOTICE:** Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Wayne Kohlrust, Project Manager  
Incorporated County of Los Alamos  
1000 Central Avenue, Suite 160  
Los Alamos, New Mexico 87544

Contractor:

Dave Matson  
Terracon Consultants, Inc.  
6805 Academy Parkway West, NE  
Albuquerque, New Mexico 87109

**SECTION T. INVALIDITY OF PRIOR AGREEMENTS:** This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

**SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM:** A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

**SECTION V. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES:** Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

**SECTION W. DUPLICATE ORIGINAL DOCUMENTS:** This document may be executed in two (2) counterparts, each of which shall be deemed an original

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

\_\_\_\_\_  
**NAOMI D. MAESTAS**  
**COUNTY CLERK**

BY: \_\_\_\_\_  
**HARRY BURGESS** **DATE**  
**COUNTY MANAGER**

**Approved as to form:**

\_\_\_\_\_  
**J. ALVIN LEAPHART**  
**COUNTY ATTORNEY**

**TERRACON CONSULTANTS, INC., A DELAWARE CORPORATION**

BY: \_\_\_\_\_  
**NAME:** \_\_\_\_\_ **DATE**  
**TITLE:** \_\_\_\_\_

Exhibit "A"  
Compensation Rate Schedule\*  
AGR21-07c

Item No.	Items with Unit Bid Prices	Unit Price YEARS 1-4
37	Asbestos Testing – normal turn-around	\$20.00/Sample
38	Asbestos Testing – rush turn-around	\$25.00/Sample
39	Lead Paint Testing – normal turn around	\$20.00/Sample
40	Lead Paint Testing – rush turn around	\$25.00/Sample
41	Asbestos Testing Bulk Analyses 400 Point Count – Normal Turn around	\$9.26/Sample
42	Asbestos Testing Bulk Analyses 400 Point Count – Rush Turn around	\$12.68/Sample
43	TCLP for Lead – 3 day turn around	\$108.50/Sample
44	TCLP for Lead – 5 day turn around	\$68.26/Sample
45	Phase Contrast Microscopy (PCM) Analyses – Normal turn around	\$6.40/Sample
46	Phase Contrast Microscopy (PCM) Analyses – Normal turn around	\$8.53/Sample
47	Transmission Electron Microscopy ("TEM") Air Clearance – Final Report	\$750.00
48	PCM Air Clearance - Final Report	\$750.00
49	Inspection, Sample Preparation, Final Report – 50 to 100 samples	\$1,250.00
	<b>TEM ANALYSIS</b>	
50	TEM AHERA Method – Normal Turn Around - Each	\$37.18/Sample
51	TEM AHERA Method – Rush Turn Around - Each	\$46.32/Sample
52	TEM NIOSH 7402 Method – Normal Turn Around - Each	\$115.81/Sample
53	TEM 7402 NIOSH Method – Rush Turn Around - Each	\$140.19/Sample
	<b>MOLD ANALYSIS</b>	
54	Direct Examination (No-culture) – Spore Trap Sample Normal Turn around	\$22.56/Sample
55	Direct Examination (No-culture based) – Spore Trap Sample Rush Turn around	\$30.48/Sample
56	Tape Lift, Bulk, Swab Sample – Normal turn around	\$19.02/Sample
57	Tape Lift, Bulk, Swab Sample – Rush turn around	\$28.04/Sample
58	Council or other Public Meeting Attendance – Project Manager / Hourly Rate	\$101.00
59	Miscellaneous Services – Supervisor / Hourly Rate	\$175.00
60	Miscellaneous Services – Worker/Technician / Hourly Rate	\$85.00
61	Mobilization – per Task Order	\$477.00
62	Abatement Project Design	\$795.00
63	Abatement Oversight (per shift, including air sampling)	\$1,007.00
64	Negative Exposure Assessment (up to 3 employees)	\$1,166.00