



**ACTIVATION NO. 2 FOR
ARCHITECTURAL/ENGINEERING AGREEMENT NO. HHS001033300015
(PROJECT NO. 20-007-BSH)**

This Activation (the “**Activation**”) to the above referenced Architectural/Engineering Agreement (the “**Base A/E Agreement**” or “**A/E Agreement**”) is entered into by the Health and Human Services Commission (“**HHSC**” or “**Owner**”) and Terracon Consultants, Inc. (“**A/E**” or “**Engineer**”), each a “**Party**” and collectively the “**Parties**,” for Architectural or Engineering Services at Big Spring State Hospital located at 1901 US-87, Big Spring, TX 79720. The Activation and the Base A/E Agreement each incorporate all of the terms, conditions, and provisions of the other agreement. In the event of a conflict between the terms of this Activation and the Base A/E Agreement, the Base A/E Agreement will control in accordance with Article 9 of the Base A/E Agreement.

PROJECT SUMMARY:**Basic Scope:**

Asbestos abatement design, air monitoring, and project management in accordance with the Texas Asbestos Health Protection Rules (TAHPR) and USEPA regulation 40 CFR Part 61 Subpart M, the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP). OSHA air monitoring for asbestos and lead-containing paint (LCP) dusts in accordance with OSHA, 1926.1101, Appendix A, Subpart Z and OSHA 29 CFR 1926.62, respectively TCLP testing of construction waste stream in accordance with USEPA 40 CFR 262 Standards Applicable to Generators of Hazardous Wastes

CONSTRUCTION COST:
(As described and defined in Article 5 of the Base A/E Agreement)

Not to Exceed \$1,490,000.00

FEE:
(As described in Articles 6 and 7 of the Base A/E Agreement)

Basic Services:

A fixed fee of \$21,678.00
(21,678.00 (fixed fee)/1,490,000.00 (construction cost) = 1.4%*)

**This percentage will be applied to all future contract sum changes for A/E increased compensation only when the A/E has provided additional services and/or there has been an addition to the A/E's scope of work directly related to the additional construction cost per the applicable Base A/E Agreement and Health and Human Services Commission's Architectural/Engineering Guidelines. There will be no change to A/E compensation if there are no A/E additional services or increase in A/E scope directly related to additional construction cost.*

UNIT PRICE FOR BID SETS:
(As described in §3.4.3 of the Base A/E Agreement)

Provide digital copies for distribution. If printed copies are requested, they shall be reimbursed as follows:

Bid set printing reimbursable unit price: N/A

SPECIAL CONSULTANTS:
(As described in §3.5.3 of the Base A/E Agreement)

Is Not Needed

ALTERNATIVE ENERGY-EFFICIENCY EVALUATION:
(As described in §3.5.7.4 of the Base A/E Agreement)

Is Not Required

PARTNERING:

Is Not Required

(As described in §3.2.5.1 of the Base A/E Agreement)

SITE VISITS: 15 days included.

(As generally described in §3.2 of the Base A/E Agreement)

REPORTS, DRAWINGS & SPECIFICATIONS: Abatement Project Report

(As described in §3.4 of the Base A/E Agreement)

SERVICES SCHEDULE: 100% Construction Documents (CD's): 7 calendar days

(As mentioned in §3.5.5 of the Base A/E Agreement; the schedule on all phases begins on a date specified by written or electronic notice [such as a notice to proceed or phase approval letter] from Owner for that particular phase; Owner's review schedule begins on the next business day after the A/E completion of the particular phase to be reviewed) Owner Review of 100% CD's: 7 calendar days

**If required to incorporate 100% CD comments prior to Bidding.*

PAYMENT SCHEDULE: 100% Construction Documents: 60%

(As described in Article 7 of the Base A/E Agreement) Construction Phase: 40%*

**To be paid monthly based on percentage of completion of construction contract.*

For any payment made under the schedule above, Owner shall withhold the greater of (a) 3% of such payment or (b) \$1000 (but in no event will the retained amount exceed 4.9% of the payment amount). Pursuant to §7.5 of the Base A/E Agreement, the entire retainage will be withheld until all required closeout documents are received and approved by the Owner.

HUB SUBCONTRACTING PLAN: Is Required

(As described in §3.5.14 of the Base A/E Agreement and amended hereto)

- DISPUTE RESOLUTION:**
1. In the event of a dispute with the Owner, A/E will employ the dispute resolution process set forth in Article 11 of the Base A/E Agreement.
 2. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the A/E, in whole or in part. Owner and A/E agree that any periods set forth in the Base A/E Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapters 2254 or 2260 of the Texas Government Code, or Chapter 114 of the Texas Civil Practice and Remedies Code, or this section.
 3. Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.
 4. In any litigation or contested case between the Owner and the Project Architect arising from this Activation or this Project, neither party will be entitled to an award of legal fees or costs in any judgment regardless of which one is deemed the prevailing party.

NOTICES:

(For the purposes of this activation, Section 20.1.1 of the Base A/E Agreement is amended to read as follows:)

The following will act as the designated representative authorized to administer activities under this Activation including, but not limited to, non-legal notices, consents, approvals, requests, or other general communications, that are provided for or permitted under the Base A/E Agreement and this Activation. Communications to the representatives may be given by written or electronic transmission to the address or email below. The designated representative on behalf of their respective Party are as follows:

HHSC Contract Representative

Roger Brigance, Senior Director of Construction Services
Health and Human Services Commission
909 W. 45th St.
Austin, TX 78751
Phone: 512-413-2820
Email: Roger.Brigance@hhs.texas.gov

A/E Contract Representative

Terry L. Adams, Senior Environmental Project Manager
Terracon Consultants, Inc.
5847 50th St.
Lubbock, TX 79424
Phone: 806-300-0140
Email: Terry.Adams@terracon.com

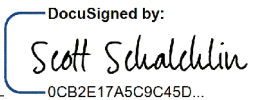
The Texas Board of Professional Engineers, 1917 IH 35 South, Austin, Texas 78741, telephone (512) 440-7723, has jurisdiction to each client for whom the Engineer renders an Engineering service in Texas.

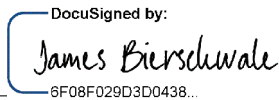
The effective date of this Activation is the date when the last signature is affixed hereto.

Each Party represents and warrants that the person executing this Activation on its behalf has full power and authority to enter into this Activation. Any services or work performed by the A/E before this Activation is effective are performed at the sole risk of the A/E.

Health and Human Services Commission

Terracon Consultants, Inc.

By:  _____
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By:  _____
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Date of Execution: January 27, 2023

Date of Execution: January 27, 2023