

January 21, 2014



City of Foley
407 East Laurel Avenue
Foley, Alabama 36535

Attn: Mr. Jeff Rouzie, Director of Economic Development
P: (251) 943-1545
E: jrouzie@cityoffoley.org

Re: Proposal for Asbestos Survey, Limited Lead Paint Chip Sampling, & Limited Visual
Observations for Mold
Former Cactus Cafe
118 West Laurel Avenue
Foley, Baldwin County, Alabama 36535
Terracon Proposal No. PE1140050

Dear Mr. Rouzie:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to the City of Foley (Client) to perform an asbestos survey, limited lead paint chip sampling, and a visual mold assessment of the above-referenced site.

A. PROJECT INFORMATION

Terracon understands that the approximately 10,000 ft² two-story former Cactus Cantina was constructed around early 1970s. Terracon understands that the Client has requested this asbestos survey, limited lead paint chip sampling, and limited visual observations for mold prior to renovation and/or demolition of the structure. An outline of Terracon's general scope of services, budget and schedule for this project is provided in the following sections.

B. SCOPE OF SERVICES

Asbestos Survey

An AHERA and State of Alabama accredited asbestos building inspector will conduct the asbestos survey as required by US Environmental Protection Agency (USEPA) regulation 40 CFR Part 61, National Emissions Standards for Hazardous Air Pollutants (NESHAP). Terracon will conduct a visual assessment of the buildings to identify suspect ACM such as thermal system insulation, surfacing materials, and miscellaneous materials (e.g., floor tiles). Suspect materials will be physically assessed for friability and evidence of damage or degradation.



Terracon Consultants, Inc. 110 12th Street North Birmingham, Alabama 35203
P [205] 942-1289 F [205] 443-5302 terracon.com

Geotechnical



Environmental



Construction Materials



Facilities

Samples of suspect ACM will be collected for laboratory analysis. Bulk sample collection will be conducted in general accordance with the sampling protocols outlined in USEPA 40 CFR 763.86.

Terracon anticipates collecting up to 90 bulk samples of suspect asbestos-containing building materials. The samples will be submitted to a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) for asbestos analysis by visual estimation using Polarized Light Microscopy (PLM). Sample collection will result in some isolated damage to building materials; however, attempts will be made to limit such damage to the extent necessary for sample collection. Terracon will not be responsible for repair or touch-up of sample locations. In addition, Terracon will not perform sampling which requires demolition or destructive activities such as knocking holes in walls, dismantling of equipment or removal of protective coverings. Reasonable efforts to access suspect materials within known areas of restricted access (e.g., crawl spaces) will be made provided these areas are not determined to be permit-required confined spaces, or to pose a health or safety risk to Terracon personnel. Sampling will not include suspect materials which cannot be safely reached with ladders available at the site.

At the request of the Client, no roofing materials will be sampled as part of the asbestos survey.

Limited Paint Chip Sampling

In conjunction with the asbestos survey, Terracon will collect representative paint-chip samples from readily accessible building areas to identify the presence and the concentration of lead paint (LP). Terracon's lead paint chip sampling is not anticipated to exceed 10 total samples. A laboratory accredited by the American Industrial Hygiene Association (AIHA) Environmental Lead Proficiency Analytical Testing (ELPAT) will analyze the samples by Flame Atomic Absorption under method SW846-7420. The lead paint testing will be conducted in an attempt to meet informational needs to comply with the Occupational Safety and Health Administration (OSHA) Lead in Construction Standard (29 CFR 1926.1101). Terracon is not responsible for painting the sample location areas to match the existing color.

Limited Visual Observations for Mold

Pursuant to the client's request and in conjunction with the asbestos survey, Terracon will observe the interior of the building for obvious indications of significant water infiltration and/or visible mold growth. This will include observations of visibly accessible surfaces in the building areas visited, and will not include observations of hidden conditions such as inaccessible areas, interior of wall cavities, interior of heating, ventilation and air conditioning (HVAC) systems, or behind intact wall coverings. The scope of the visible mold observations should not be

construed as a mold assessment. The results of the observations will be presented in the final report.

Schedule

The above scope of services may begin immediately following receipt of the executed Agreement for Services. Sampling and coordination is anticipated to take one day. Analytical laboratory analysis of samples will be on a three-day turnaround time frame after they are received by the laboratory. The written report preparation time is anticipated to take an additional 5 working days.

Conditions

Items to be provided by the Client include:

- The legal right-of-entry to conduct each 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;
- Client will provide, if available, building plans in AutoCAD format; and
- 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 survey. The report will describe the number, type and location of building material samples collected, the analytical results, and the condition of materials identified as ACM and lead paint. Terracon will quantify and provide condition of ACM and will identify the presence of lead paint and visible mold growth. No drawings depicting the location and extent of ACM, lead paint or mold growth or estimates of ACM or lead paint or mold removal costs will be provided unless specifically requested in advance by the Client. Unless otherwise instructed, a PDF copy of the final report will be submitted to the Client.

Reliance

The asbestos survey, limited lead paint chip sampling and visual observations for mold report will be prepared for the exclusive use and reliance of the City of Foley. Reliance by any other party is prohibited without the written authorization of the Client and Terracon.

If the Client is aware of additional parties that will require reliance on the 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 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 asbestos survey 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.

C. COMPENSATION

Terracon can provide the described scope of services for a not-to-exceed fee of **\$3,622.50** based on the unit rates presented below

TERRACON RATE SCHEDULE	
UNIT DESCRIPTION	RATE
Asbestos Survey and Limited Lead Paint Sampling Services (includes field time, project management, report preparation and data analysis @ \$75/hour)	\$1,350 (Lump Sum)
Mileage from Birmingham, AL office (550 miles roundtrip @ \$0.55/mile)	\$302.50 (Lump Sum)
Sr. Technical Review (CIH – 2 hours @ \$145/hour)	\$290 (Lump Sum)
Asbestos Bulk Sample Analysis (assume 90 bulk samples @ \$12/sample, 3 - day turnaround)	\$1,080 (Lump Sum)
Lead Paint Chip Sample Analysis (assume 10 paint chip samples @ \$10/sample, 3 - day turnaround)	\$100 (Lump Sum)
Visual Mold Assessment (visual walk thru and recommendations in the report)	\$500 (Lump Sum)

Additional samples of suspect ACM, if required, will be invoiced at \$12.00 each, if authorized. Additional samples of suspect lead paint, if required, will be invoiced at \$10.00 each, if authorized.

Terracon's invoice will be submitted to the address appearing above upon completion of the proposed services. 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 samples which will increase the cost of the survey, you will be contacted for discussion and approval of such changes before we proceed.

If this scope of services meets with your approval, work may be initiated by returning an original copy of the attached Agreement for Services to our Birmingham office. Project initiation may be

Proposal for Environmental Services
Former Cactus Cantina ■ Foley, Alabama
January 21, 2014 ■ Proposal No. PE1140050



expedited by faxing a copy of the signed Agreement for Services to Patrick Peoples at (205) 443-5302 or emailing it to pnpeoples@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 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 "Patrick N. Peoples".

Patrick N. Peoples
Environmental Specialist

A handwritten signature in black ink, appearing to read "A. McKenney".

Amanda McKenney, CIH
Industrial Hygienist

Attachments: Agreement for Services

AGREEMENT FOR SERVICES

This **AGREEMENT** is between City of Foley ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Cactus Cantina Environmental Services project ("Project"), as described in the Project Information section of Consultant's Proposal dated 01/21/2014 ("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/ 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 \$10,000 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 PREVIOUSLY STATED, 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 Alabama 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: *Amanda J McKenney* Date: 1/21/2014
 Name/Title: Amanda J McKenney, CIH / Senior Project
Industrial Hygienist
 Address: 110 12th St. North
Birmingham, AL 35203
 Phone: (205) 942-1289 Fax: (205) 443-5302
 Email: ajmckenney@terracon.com

Client: City of Foley
 By: _____ Date: _____
 Name/Title: Jeff Rouzie /
 Address: 407 East Laurel Avenue
Foley, AL 36535
 Phone: (251) 943-1545 Fax: (251) 952-4012
 Email: jrouzie@cityoffoley.org

Reference Number: PE1140050