

**JOHNSON COUNTY CONTRACT TERMS ADDENDUM  
TO TERRACON CONSULTANTS, INC's., TERMS AND CONDITIONS  
FOR SERVICES RELATED TO A SURVEY FOR ASBESTOS OR  
HARMFUL CONSTRUCTION MATERIALS IN THE C1 CORRECTIONS  
CONSTRUCTION AREA**

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This Addendum is part of an Agreement between Johnson County, Texas, a political subdivision of the State of Texas, (hereinafter referred to as "County"), and Terracon Consultants, Inc. ("Terracon"). The County and Terracon may be collectively referred to as the "PARTIES". This is an Addendum to the Terms for services related to a survey for asbestos or harmful construction materials in the C1 Corrections construction area. The attached documents along with this Addendum shall constitute the entire and complete Agreement between the Parties.

1. This Agreement will be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.
2. Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.
3. Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.
4. The Parties agree that under the Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.
5. The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said insurance coverage is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

6. The Parties agree and understand that County will not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC") as codified and set forth in the Texas Business and Commerce Code effective as of September 1, 2014; therefore, any provision to the contrary is hereby deleted.

7. The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

8. The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

9. Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31<sup>st</sup> day after the later of:

- a. the date the governmental entity receives the goods under the contract;
- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

10. No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

11. To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any software, or any part thereof, or other items or data furnished to Johnson County whether or not the same are available to

the public. It is further understood that Johnson County, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Johnson County, its officers and employees shall have no liability or obligations to Terracon for the disclosure to the public, or to any person or persons, of any software, or a part thereof, or other items or data furnished to Johnson County by Terracon in reliance on any advice, decision or opinion of the Attorney General of the State of Texas.

12. Services and products provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

13. Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

14. It is understood and agreed that Johnson County will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.

15. Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

16. The continuation of this Agreement from year to year is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by Terracon pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary.

17. Terracon certifies compliance with all terms, provisions, and requirements of Titles VI and VII, civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and any other Federal, State, local or other anti-discriminatory act, law, statute, or regulation, in the performance of this contract, and will not discriminate against any child or youth, client, employee or applicant for employment because of race, creed, religion, age, sex, color, national or ethnic origin, handicap, or any other illegal discriminatory basis or criteria.

18. Terracon certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Terracon states that it is not ineligible to receive State or Federal funds due to child support arrearages.


19. Notwithstanding any other provision in this Addendum or the associated documents, Terracon is being contracted to provide professional management, engineering and / or architectural

services and information and make such information available for use by Johnson County and associated government entities or political subdivisions of the State of Texas. Accumulated data, documents and records are and shall be the exclusive property of Johnson County, Texas or the State of Texas or a political subdivision thereof.

20. The parties agree and understand that this Addendum is to clarify, limit, modify or delete terms and provisions of the Agreement and in the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement or other documents, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted.

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:

  
\_\_\_\_\_  
Roger Harmon  
County Judge

8/8/16  
Date

Attest:   
\_\_\_\_\_  
County Clerk, Johnson County

8/8/16  
Date



TERRACON CONSULTANTS, INC.:

  
\_\_\_\_\_  
Roger L. Beahm, Department Manager  
Terracon Consultants, Inc.

7/28/16  
Date



June 6, 2016

Johnson County  
1800 Ridgemar  
Cleburne, Texas

Attn: Mr. Justin Scharnhorst  
T: (817) 556.6382  
E: [jscharnhorst@johnsoncountytex.org](mailto:jscharnhorst@johnsoncountytex.org)

Re: Asbestos Survey and Limited Lead-Based Paint Inspection  
Johnson County Jail – C Block  
1800 Ridgemar  
Cleburne, Texas  
Terracon Proposal No. P95167339

Dear Mr. Scharnhorst:

Terracon Consultants, Inc. (Terracon) is pleased to submit this proposal to perform an asbestos survey and a lead-based paint (LBP) inspection at the above referenced building.

**A. PROJECT INFORMATION**

All work will be performed under the attached Agreement for Services. The asbestos survey will include collecting samples of suspect materials on the interior of the Johnson County Emergency Operations Center building located at 1800 Ridgemar in Cleburne, Texas. In addition, Terracon will collect paint chip samples for the presence of lead-based paint (LBP) from representative coated surfaces on the interior of the building.

**B. SCOPE OF SERVICES**

**Asbestos Survey**

Terracon will mobilize a team of State of Texas licensed asbestos consultants/inspectors to conduct the Asbestos Survey activities as required by the Texas Asbestos Health Protection Rules (TAHPR) and the US Environmental Protection Agency (USEPA) regulation 40 CFR Part 61, National Emissions Standards for Hazardous Air Pollutants (NESHAP) which require the survey of a building for ACM prior to any scheduled renovation or demolition activities. Terracon will conduct a visual assessment of the building to identify materials suspected of containing asbestos (suspect ACM). Suspect materials will be physically assessed for friability and evidence

Terracon Consultants, Inc. 2501 East Loop 820 North, Fort Worth, Texas 76118  
P (817) 268 8600 F (817) 268 8602 [terracon.com](http://terracon.com)

Environmental

Facilities

Geotechnical

Materials

**Asbestos Survey & Lead-Based Paint Inspection**  
Johnson County Jail – C Block □ 1800 Ridgemar  
Cleburne, Texas □ June 6, 2016 □ Proposal No: P95167339

**Terracon**

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

It should be understood that in order to obtain samples of materials it may be necessary to perform semi-damaging sampling (i.e., remove a small section of floor tile, texture, wall board, etc.) which may require touch-up repair or painting. Terracon will not be responsible for the repair or touch up of sample locations, if required. Furthermore, Terracon does not perform sampling, which involves demolition or destructive type activities (i.e., knocking hole in walls to access and sample possible materials, dismantling equipment or protective coverings, etc.). Only materials which are readily accessible will be evaluated.

Any materials hidden or not readily accessible (i.e., piping in walls, hidden insulation treatments, materials under carpet, etc.) may not be assessed in this survey; however, Terracon will perform a certain degree of effort to access suspect materials within known areas (i.e., crawl spaces), provided these areas are not classified as confined spaces, or deemed to be a health or safety risk to the inspector.

Currently, it is anticipated that up to 110 suspect asbestos samples may be obtained during the survey. It is estimated that the on-site survey will be completed in two (2) days. Please note the number of samples to be collected will depend on the homogeneous materials identified. Current TDH and EPA regulations require that a minimum number of samples from each homogeneous area be obtained in order to characterize a material as non-ACM.

The samples collected will be analyzed for asbestos content by Polarized Light Microscopy (PLM), using the "Interim Method of the Determination of Asbestos in Bulk Insulation Samples". The percent of asbestos, where applicable, will be determined by visual estimation.

Cates Laboratory, Inc., a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP), will analyze bulk material samples by visual estimation using polarized light microscopy (PLM). When PLM sample results are greater than zero but less than 10% asbestos, USEPA NESHAP regulations require that the sample be re-analyzed using the more quantitative point counting technique, or that the material be considered ACM and subject to NESHAP regulations. Point Count and/or Transmission Electron Microscopy will not be performed as part of this scope of work, unless otherwise directed by the client.

#### **Limited Lead-Based Paint Inspection**

Terracon will mobilize a State of Texas certified lead risk assessor to collect paint chip samples from the accessible painted coatings/surfaces that may be impacted by the proposed renovation. Currently, it is anticipated that Terracon will collect up to 60 paint chip samples. It is estimated that the on-site survey will take approximately two (2) days to complete. If an area is not accessible due to safety concerns, the paint coating adjacent to the area will be sampled, and

assumed to be homogenous to the inaccessible paint coatings. The paint sampling will be conducted in general accordance with applicable state and federal regulations for compliance with OSHA 1926 - Lead Construction Standard.

The paint chip samples collected will be analyzed in accordance with the NIOSH 7082 using Atomic Absorption (AA) to determine whether the paint chip samples contain a detectable concentration of lead. The laboratory analyzing the samples will be an American Industrial Hygiene Association (AIHA) accredited laboratory.

### **Schedule**

The above scope of services may begin immediately following receipt of the executed Agreement of Services.

### **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.
- If available, building plans in AutoCAD.
- Any known environmental conditions at the sites (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 separate written reports for asbestos and lead-based paint describing the sampling methodology and the results of the survey. The reports will describe the number, type and location of building material samples collected, the analytical results, the estimated quantity and the condition of materials identified as ACM. No drawings depicting the location and extent of ACM or estimates of ACM removal costs will be provided unless specifically requested in advance by the client. Unless otherwise instructed, one electronic copy of each final report will be submitted to the address indicated herein.

### **Reliance**

The Reports will be prepared for the exclusive use and reliance of Johnson County. Reliance by any other party is prohibited without the written authorization of Johnson County and Terracon.

Asbestos Survey & Lead-Based Paint Inspection  
Johnson County Jail – C Block @ 1800 Ridgemar  
Cleburne, Texas @ June 6, 2016 @ Proposal No: P95167339

**Terracon**

If the client is aware of additional parties that will require reliance on the reports, 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 Asbestos Survey 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.

Reliance on the reports 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 asbestos survey and limited lead-based paint inspection described above will be performed for a lump sum fee of \$5,175.00. This fee includes PLM analysis of up to 110 suspect asbestos samples submitted for standard turnaround and up to 60 paint chip samples submitted for standard turnaround. It is estimated that the on-site surveys will take approximately two (2) days to complete. Additional samples, if required, will be billed at \$15.00/sample for bulk material samples and \$14.00/sample for paint chip samples.

Terracon's invoice will be submitted to the address appearing above upon completion of the proposed services. If conditions are encountered at the site that require significant changes in the scope of services or a significant increase in the anticipated number of samples which will increase the cost of the surveys, 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 this Agreement for Services to our Fort Worth, Texas office. Project initiation may be expedited by emailing a copy of the signed Agreement for Services to Roger Beahm at [rbeahm@terracon.com](mailto:rbeahm@terracon.com).

The terms, conditions and limitations stated in the Agreement (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.



Asbestos Survey & Lead-Based Paint Inspection  
Johnson County Jail – C Block □ 1800 Ridgemar  
Cleburne, Texas □ June 6, 2016 □ Proposal No: P95167339

**Terracon**

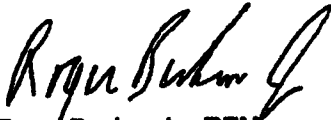
We appreciate the opportunity to provide this proposal and look forward to working with you on this project. If you have any questions or comments regarding this proposal or require additional services, please give me a call.

Sincerely,

**Terracon**



S. Marshall Rhodes  
Staff Scientist



Roger Beahm Jr., REM  
Asbestos Department Manager

Attachment

## AGREEMENT FOR SERVICES

This AGREEMENT is between Johnson County ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Johnson County Jail - C Block project ("Project"), as described in the Project Information section of Consultant's Proposal dated 08/02/2016 ("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 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, instructs, 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 4.99% 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 these 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 ASSURED, 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. PRIOR TO ACCEPTANCE OF THIS AGREEMENT AND 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, CAUSES 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. Waiver 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. If, however, 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 accordance 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. Warranties.** 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

# Terracon

limit; and (b) 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~~ **Texas 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 those 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 damage ~~caused by or 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: 6/8/2016  
 Name/Title: Roger L. Boehm / Department Manager II  
 Address: 2901 E Loop 820 N  
Fort Worth, TX 76118-6978  
 Phone: (817) 288-8800 Fax: (817) 288-8802  
 Email: Roger.Boehm@terracon.com

Client: Johnson County  
 By: [Signature] Date: 8/8/16  
 Name/Title: Roger Harmon / County Judge  
 Address: 2 N. Main St  
Cleburne, Texas 76033  
 Phone: 817-556-4360 Fax: 817-556-6359  
 Email: Judge@JohnsonCountyTX.org

Attest: [Signature]  
 County Clerk, Johnson County

Reference Number: P85167330

