

AGREEMENT FOR SERVICES

This **AGREEMENT** is between City Of Norman OK ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Water Reclamation Facility - Phase 2 Improvements project ("Project"), as described in the Project Information section of Consultant's Proposal dated 06/27/2014 ("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 \$50,000 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, 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 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: **6/30/2014**
 Name/Title: **Aron P Hancock / Department Manager II- Materials**
 Address: **4701 N Stiles Ave.**
Oklahoma City, OK 73105
 Phone: **(405) 525-0453** Fax: **(405) 557-0549**
 Email: **aphancock@terracon.com**

Client: **Norman Utilities Authority/City of Norman**
 By: _____ Date: _____
 Name/Title: **Chairman**
 Address: **Norman Utilities Authority 201 West Gray,**
Building C - P. O. Box 370
Norman, OK 73069
 Phone: **(405) 366-5377** Fax: _____
 Email: _____

Reference Number: P03140421

Approved by the City Attorney:
 on _____

ATTEST:

 Secretary



June 30, 2014

Norman Utilities Authority - City of Norman
 201-C West Gray
 Post Office Box 370
 Norman, Oklahoma 73070

Attn: Mark Daniels
 P: (405) 366-5377
 E: mark.daniels@normanok.gov

Re: Proposal for Soils Testing and Observation Services
 Water Reclamation Facility - Phase 2 Improvements
 City of Norman, Oklahoma
 Terracon Proposal Number: P03140421

Dear Mr. Daniels:

We appreciate the opportunity to submit our proposal to provide construction materials engineering and testing services for the above referenced project. This proposal describes our understanding of the project, the scope of services, and our budget estimate.

A. PROJECT INFORMATION

Site Location

ITEM	DESCRIPTION
Location	3500 South Jenkins Avenue Norman, Oklahoma
Existing structures	Norman WRF

Project Description

ITEM	DESCRIPTION
Construction	It is our understanding that the project will involve construction of a new influent meter and primary clarifier division, secondary clarifier, RAWWAS pump station, UV disinfection post aeration basins, 66 in. effluent line, sludge blending tank and thickened sludge pump station. The project will also involve modifications to existing primary clarifiers, aeration system, secondary clarification splitter box and WAS thickening. Associated concrete and asphalt pavements will also be constructed.

Should any of the above information or assumptions be inconsistent with the planned construction, please let us know so we may review the information and make any necessary modifications to this proposal.

B. SCOPE OF SERVICES

Terracon has prepared a proposal based on the scope of work outlined in the Request for Proposal (RFP 1314-68) for Water Reclamation Facility (WRF) Phase 2 Improvement, City of Norman, Oklahoma and provided by Mr. Mark Daniels, Project Manager with the City of Norman, on June 24, 2014. It is our understanding that the project will involve earthwork and concrete testing and inspection services for additions to existing facilities as well as construction of new facilities at the WRF. Per RFP 1314-68, the anticipated construction period is 30 months and construction began on June 2, 2014.

Based on testing requirements mentioned in RFP 1314-68, Terracon assumes **(50) three-hour** trips will be required to perform field density and moisture content testing of in-place select fill material, trench backfill and/or embankment fill material.

Terracon expects **300 three-hour** trips will be necessary to perform slump and air content tests and collect **425 sets of three concrete cylinders**, as specified in RFP 1314-68. Each set will be tested for concrete compressive strength at 7-days and 28-days, with one cylinder kept in reserve for possible verification testing.

Standard Proctor, Atterberg Limits and -200 Sieve Analysis testing is expected to be performed for estimated **10 soil samples**. Full sieve analysis and gradation testing is estimated to be performed on **3 soil and aggregate samples**, respectively.

Terracon also expects **(100) one and half-hour trips** and **(10) one and a half-hour trips** to pick up compressive strength cylinders and soil samples, respectively.

Terracon incorporates **travel time to the project location** in calculating **hours per trip** mentioned in this proposal.

These assumptions are based entirely on the details provided in RFP 1314-68. The site schedule and/or any changes to the scope of work could affect the total amount of trips to the site to complete the actual scope of work provided.

Based on our understanding of the project, we propose to provide the following scope of services:

Earthwork related services could include but are not limited to:

- Sampling and laboratory testing of soil and aggregate materials proposed for use during site grading and backfilling operations. The laboratory tests would include Atterberg Limits and sieve analysis for sample classification, and/or Standard (ASTM D-698) or Modified (ASTM D-1557) Proctor tests (as per project specifications) to establish the moisture-density relationship for use in evaluating the percent compaction for field density tests.
- In-place moisture and density measurements by the nuclear method. A testing frequency of about one test per 2,500 square feet per compacted lift is generally assumed unless defined by the project specifications.

Foundation related services could include but are not limited to:

- Observing excavations relative to size, depth and presence of loose soils,
- Evaluating bearing soils at the base of selected foundations relative to their suitability for the design bearing pressure, and (if requested)
- Observing placement of reinforcing steel relative to number, size and spacing of bars.
- Drilled Piers - One set of 4 cylinders cast per 100 yd³ placed is generally assumed unless defined by project specifications.

Concrete related services could include but are not limited to:

- Field sampling and testing of concrete for slump, air content and temperature,
- Making, transporting, curing and testing cylindrical (compressive) and/or (flexural) test specimens (as per project specifications).
- Floor flatness testing, (available upon request)
- Calcium chloride moisture testing at 3 test for first 1000 square feet then 1 test for each additional 1000 square feet (available upon request)

Additional services:

- If you would like us to perform any additional work, please contact us and we will issue a short Supplement to Agreement form, or Supplemental Proposal, that outlines the additional work to be performed and associated fees.

D. 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. Terracon 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 of any third parties, including Client's contractors, subcontractors, or other parties present at the site.



At **Terracon**, we all have a personal and uncompromising commitment to everyone going home safely each and every day. Incident and Injury-Free (*IIF*) is about care and concern for people. It is our personal and organizational commitment at all levels of the company and is where safety is held as a core value as well as an operational priority. Working safely is an inseparable part of working correctly, just as much as other operational priorities, in particular quality, profitability and schedule. Incident and Injury-Free is our commitment to our people, who we value for who they are and what they do. *IIF* is not just something we do; it's in everything we do.

As part of our *IIF* process, we will prepare a "Pre-Task Plan" for this project where we will identify the potential site safety and job hazards associated with your site. Our Pre-Task Plan will identify and prepare our personnel to be able to assess unsafe conditions and identify potential hazards. However, our job will not stop there; we will communicate our findings to you and your project Team in order to avoid delays and unfortunate events.

E. TESTING AND OBSERVATION

The above services will be provided under an **As Requested** basis. We require a 24-hour notice to schedule our services. **There will be a 5% additional per hour charge for all service calls received with less than a 24 hour notice.**

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. Terracon will provide test results and opinions based on tests and field observation 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 notifying and scheduling Terracon so Terracon can perform these services. Terracon shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Terracon's performance of testing and observation services shall not relieve contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Terracon will not supervise or direct the work performed by contractor or its subcontractors and is not responsible for their means and methods.

F. COMPENSATION

Observation and material testing services provided will be billed at the rates shown on the attached **Fee Schedule**. Based on the scope of services provided by Mr. Mark Daniels with the



City of Norman, we estimate a cost of approximately **\$101,998.50**. All services will be billed at the time-and-materials rates shown on the **Fee Schedule**. Please note that this is only a budget estimate and not a not-to-exceed price. Many factors beyond our control, such as weather and the contractor's schedule, will dictate the final fee for our services.

An overtime premium of 1.5 times the hourly rate will apply for services provided Monday through Friday that are in excess of 8 hours per day and for services provided before 7:00 AM and after 6:00 PM, as well as for services provided on Saturday, Sunday and Terracon recognized Holidays. Technician and consulting services will be billed at a four hour minimum. The quantity of the work performed and factors beyond our control, such as weather and the contractor's schedule/efficiency, will affect the actual cost for our services. You will be invoiced at regular intervals but not less than monthly for services performed. Invoices for our services will be directed to the addressee of this letter unless we are directed otherwise. Payment is due within thirty (30) days following receipt of an invoice.

G. EXPERIENCE ON SIMILAR PROJECTS

Terracon has provided materials testing and inspection services for the following water, waste water and pollution control facilities in the recent past:

PROJECT	PERIOD	CLIENT
Deer Creek WWPCF	2013 - Present	City of Oklahoma City / CDM Smith
Midwest City Pollution Control Facility	2012 - Present	Black & Veatch Corporation
Davis WTP	2012 - 2014	Walters-Morgan Construction, Inc.
Tri-County #2 WTP	2013	Tri-County Rural Water District
South Canadian WWTP	2011 - 2013	City of Oklahoma City / CP&Y
Hefner WTP	2010 - 2011	City of Oklahoma City / Tetra Tech
Moore WWTP	2010 - 2014	Wynn Construction Company
Mustang WWTP	2009 - 2010	Walters-Morgan Construction, Inc.
Harrah WWTP	2009 - 2010	BRB Contractors, Inc.
Anadarko WWTP – Phase #2	2006	Anadarko Public Works Authority

Project Team:

Please refer Exhibit C for Project Team Resumes

Proposal for Construction Materials Engineering & Testing Services
Proposed Water Reclamation Facility - Phase 2 Improvements ■ Norman, OK
June 30, 2014 ■ Terracon Proposal No. P03140421



References:

Sri Koduri
Project Engineer – Deer Creek WWPCF
CDM Smith, Inc.
8140 Walnut Hill Lane, Suite 1000
Dallas, TX 75231
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koduris@cdmsmith.com

Matthew Sloan
Resident Inspector – Midwest City PCF
Black & Veatch Corporation
7420 NE 36th Street
Oklahoma City, OK 73141
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sloanmb@bv.com

Kevin Lang
Project Manager – Moore WWTP
Wynn Construction Co.
11901 N. Eastern Avenue
Oklahoma City, OK 73131
(405) 232-9107
klang@wynnconstruction.com

Joe Painter
Project Manager – Hefner WTP
Tetra Tech
119 N Robinson, Suite 700
Oklahoma City, OK 73102
(405) 606-8600
joe.painter@tetratech.com

G. AUTHORIZATION

This proposal may be accepted by executing the attached Agreement for Services and returning one copy along with this proposal to Terracon. This proposal is valid only if authorized within sixty days from the listed proposal date.

We appreciate the opportunity to be part of your team on this project. Please contact us if you have questions or comments regarding this proposal.

Sincerely,
Terracon Consultants, Inc.

Aron P. Hancock
Department Manager II ■ Materials

Sureel S. Saraf
Staff Engineer ■ Materials

Attachments: Exhibit A - Agreement for Services
Exhibit B - Schedule of Services and Fees
Exhibit C - Project Team Profile