

March 29, 2017

City of Broken Arrow  
815 East 3rd Street, Suite C  
Tulsa, Oklahoma 74120

Attn: Mr. Kenneth D. Schwab, P.E., CFM

Re: Proposal for Laboratory Testing Services  
Hendershot Tiger Hill Development  
E. Kenosha Street & North 9<sup>th</sup> Street  
Broken Arrow, Oklahoma  
Terracon Proposal No. P04175065R

Dear Mr. Schwab:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to provide laboratory testing services for the above referenced project. The purpose of this study will be to perform laboratory tests on soil samples from the site and provide results. Of these tests. This proposal outlines our understanding of the project and scope of services and provides a lump sum fee for our services.

## A. PROJECT INFORMATION

### Site Location

Item	Description
Location	Southwest corner of the E. Kenosha Street & North 9th Street intersection in Broken Arrow, Oklahoma.
Existing improvements	None.
Current ground cover	Grass and dirt (assumed).
Existing topography	Generally slopes downward from the southwest to the northeast. A pile of soil, having a height of about 10 feet, is located in the west central portion of the site.



## Proposal for Laboratory Testing Services

Hendershot Tiger Hill Development ■ Broken Arrow, Oklahoma

March 29, 2017 ■ Terracon Proposal No. P04175065R



### Project Description

Item	Description
<b>Proposed Development</b>	Two single-story, slab-on-grade retail/restaurant buildings with floor plan areas of about 11,620 and 20,110 square feet are planned for Lot 3 on the east half of the property. Preliminarily, a restaurant is planned for Lot 2 in the west central portion of the property; however the use and location of the building could change. No development has been planned at this time for Lot 1 to the west edge of the property. New paved parking areas and drives will also be constructed.
<b>Maximum Structural Loads</b>	Columns: 60 kips (assumed) Walls: 3 kips/foot (assumed)
<b>Grading (assumed)</b>	Based on the grading plan provided by W Design, maximum cut depths of about 10 feet and maximum fill depths of about 3 feet, relative to the existing grades, will be required to develop the final building and pavement subgrade elevations.

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

## B. SCOPE OF SERVICES

Laboratory Testing and Report – As part of a separate proposal for W Design, we will drill a total of 15 borings for the project. As requested, the laboratory testing program will include two (2) Atterberg Limits tests for each boring and one (1) triaxial shear test in seven (7) of the 15 borings, as depicted in the attached diagram. The tests will be taken in the top 5 feet of each boring. The triaxial shear tests are intended to provide data about the drained angle of internal friction and cohesion of the soil. It should be recognized that triaxial shear testing may not be viable for every boring, depending upon soil type, sample recovery, and sample integrity.

After completing the testing, a report will be prepared by or under the supervision of a Registered Professional Engineer. One (1) electronic copy will be provided. The report will include the following:

- Computer generated boring logs with soil stratification based on visual soil classification and laboratory test results.
- Summarized laboratory test results.
- Groundwater levels observed during drilling and immediately after drilling completion.

Schedule - The results of the triaxial shear testing will be submitted within 65 working days following drilling. Preliminary information can be provided, if required by the project schedule.

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**C. COMPENSATION**

For the scope of geotechnical services outlined in this proposal that includes drilling, laboratory testing, and an engineering report, we estimate a fee of \$10,815.00. Atterberg limits tests will be invoiced at a unit rate of \$70.00 per test, and triaxial shear tests will be invoiced at a rate of \$1,325.00 per test.

Should site and/or subsurface conditions be encountered which require major revisions in our subsurface exploration program or fee, we will contact you prior to initiating the work.

**D. AUTHORIZATION**

This proposal may be accepted by executing the attached Agreement for Services and returning one copy along with this proposal to Terracon.

We appreciate the opportunity to provide this proposal and look forward to the opportunity of working with you.

Sincerely,

**Terracon**

*Cert. of Auth. #CA-4531 exp. 6/30/17*

Vaughn Rupnow, P.E.  
Department Manager

Bradley M. Watts, P.E.  
Principal

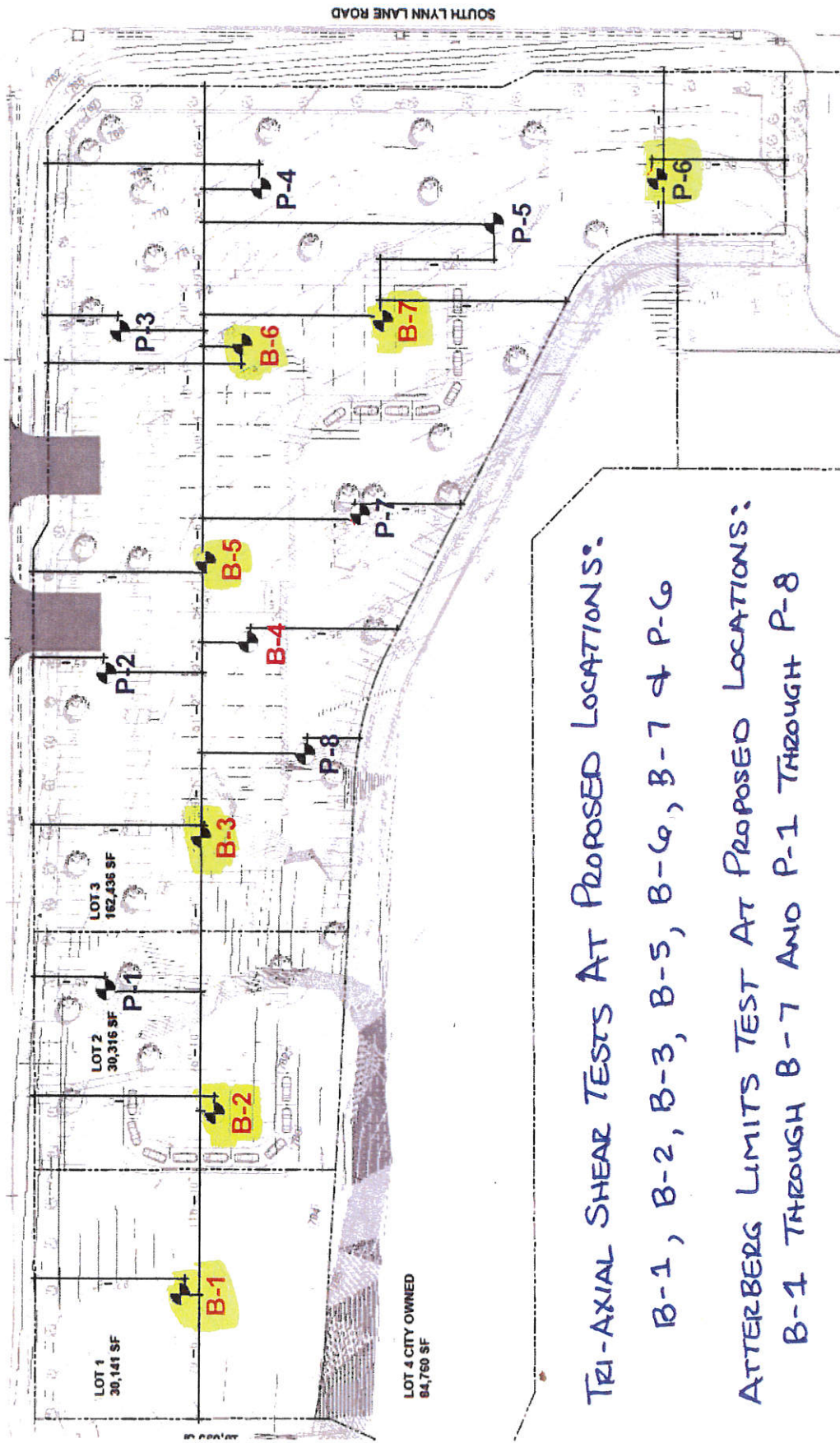
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Enclosure

Copies to:

weldon@wdesignsite.com – 1 via email

EAST KENOSHA STREET



1 SITE PLAN - BORING LOCATIONS

TRI-AXIAL SHEAR TESTS AT PROPOSED LOCATIONS:

B-1, B-2, B-3, B-5, B-6, B-7 & P-6

ATTERBERG LIMITS TEST AT PROPOSED LOCATIONS:

B-4 THROUGH B-8 AND P-1 THROUGH P-8

APPROXIMATE BORING LOCATIONS

# BORING LOCATION PLAN



P0475065R  
MHH 4/6/17

## AGREEMENT FOR SERVICES

This **AGREEMENT** is between City of Broken Arrow ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Hendershot Tiger Hill Development Laboratory Testing project ("Project"), as described in the Project Information section of Consultant's Proposal dated 03/10/2017 ("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 other than those who have executed Consultant's reliance agreement, subject to the prior approval of Consultant and Client.
- 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 \$1,000,000 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 IN THE FORM OF A SURCHARGE TO BE ADDED TO THE AMOUNT STATED IN THE COMPENSATION SECTION OF THE PROPOSAL. 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)

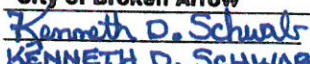
\$1,000,000  
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commercial general liability insurance (\$1,000,000 occ / \$2,000,000 agg); (iii) automobile liability insurance (\$1,000,000 B.I. and P.D. combined single limit); and (iv) professional liability insurance (\$1,000,000 claim / agg). Certificates 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 shall cause all tests and inspections of the site, materials, and Services performed by Consultant to be timely and properly scheduled in order for the Services to be performed in accordance with the plans, specifications, contract documents, and Consultant's recommendations. No claims for loss or damage or injury shall be brought against Consultant by Client or any third party unless all tests and inspections have been so performed and Consultant's recommendations have been followed. Unless otherwise stated in the Proposal, Client assumes sole responsibility for determining whether the quantity and the nature of Services ordered by Client is adequate and sufficient for Client's intended purpose. 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. The extension of unit prices with quantities to establish a total estimated cost does not guarantee a maximum cost to complete the Services. The quantities, when given, are estimates based on contract documents and schedules made available at the time of the Proposal. Since schedule, performance, production, and charges are directed and/or controlled by others, any quantity extensions must be considered as estimated and not a guarantee of maximum cost.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of the testing procedures (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 Materials unless specifically provided in the Services, and that Client is responsible for directing such disposition. 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 and Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's 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.~~ **DELETED KOS 4-5-17 HHH 4-6-17**
- 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  
By:  Date: 3/10/2017  
Name/Title: Bradley M Watts, P.E. / Principal  
Address: 9522 E 47th Pl Ste D  
Tulsa, OK 74145-7211  
Phone: (918) 250-0461 Fax: (918) 250-4570  
Email: Brad.Watts@terracon.com

Client: City of Broken Arrow  
By:  Date: 04-05-17  
Name/Title: KENNETH D. SCHWAB / ASSIST. CITY MAN.  
Address: 485 N. Poplar Ave. 220 S. 1st Street  
Broken Arrow, OK 74012  
Phone: 918-259-2400 Fax: 918-259-8226  
Email: kschwab@brokenarrowok.gov