

CONTRACT
CITY OF BROKEN ARROW
PROFESSIONAL ENVIRONMENTAL SUPPORT SERVICES
PROFESSIONAL SERVICES CONTRACT NUMBER: S.1609

1. Architect/Engineer Firm:

- a. Name: Terracon Consultants, Inc.
- b. Telephone No.: (918) 250-0461
- c. Address: 9522 E. 47th Pl., Unit D, Tulsa, OK 74145

2. Project Title and Location: County Line Trunk Sewer Jurisdictional Waters of the U.S. Assessment and United States Army Corp of Engineers (USACE) Permitting Assistance, Broken Arrow, OK

3. Contract for: Jurisdictional Waters of the U.S. Assessment including desk top review, site visit and report preparation; and USACE Permitting Assistance including requisite meetings with the USACE, data requests from the USACE and site visits in Broken Arrow, OK

4. Contract Data:

a. Contract Amount:

Task 1: to be invoiced as lump sum at \$8,000.00

Task 2: to be invoiced as hourly not to exceed at \$6,000.00

Total: Not to exceed amount of Fourteen Thousand Dollars (\$14,000.00).

b. Liquidated Damages: N/A.

c. The total time allowed for contract completion is; Task 1: 28 calendar days and Task 2: 100 calendar days.

5. The City of Broken Arrow, represented by the City Manager, and the Professional Service Provider, identified in paragraph 1, agree to perform this contract in strict accordance with the clauses, provisions, and the documents identified as follows, all of which are made part of this contract. In the event of conflict, these documents shall be interpreted in the following order:

- a. This Contract
- b. Duly Authorized Change Orders arising out of this Contract
- c. Special Provisions set out in this Contract
- d. General Provisions set out in this Contract
- e. A/E's Proposal for this Contract dated 08/20/18

6. Contract approved by the City Manager on: 08-30-18

CITY OF BROKEN ARROW
PROFESSIONAL ENVIRONMENTAL SUPPORT SERVICES
PROFESSIONAL SERVICES CONTRACT NUMBER: S.1609

The City of Broken Arrow and Terracon Consultants, Inc., with its place of business located at 9522 E. 47th Pl., Unit D, Tulsa, OK 74145, hereby enters into the following Contract:

The City Manager, representing the City of Broken Arrow, is contracting to acquire the professional services of the Consultant to provide Jurisdictional Waters of the U.S. Assessment including desk top review, site visit and report preparation; and USACE Permitting Assistance including requisite meetings with the USACE, data requests from the USACE and site visits in Broken Arrow, OK

The Consultant shall perform all duties, responsibilities and requirements set out in the Professional Services Contract Special Provisions Attachment, attached hereto and made a part hereof.

These duties, responsibilities and requirements shall begin upon the execution of this Contract and shall be completed within One hundred and Twenty-eight (128) calendar days.

It is agreed that the Consultant shall be compensated at the hourly rate in accordance with attached hourly rate schedule and the total compensation under this contract is Not To Exceed Fourteen Thousand and No/100 (\$14,000.00) for the entire Scope of the Professional Services rendered. The City Engineer will issue a Notice to Proceed for each item of work identified under this agreement, following mutual agreement between the consultant and the City on the hours required for the work item. The Consultant shall submit invoices requesting payment for services rendered to the City Engineer monthly in accordance with actual progress of the work on each work item. The invoices shall be in a format satisfactory to the City Engineer. Payment will be made following the first eligible City Council meeting occurring after the date on the invoice.

The Consultant agrees that this professional service shall be treated as an important service to the City and also agrees to commit the time necessary to perform the professional services in a professional manner.

The parties agree that the Consultant's position is not a traditional City employee position; therefore the foregoing constitutes all the benefits and other forms of compensation due the Consultant, acting in the role of an independent contractor, and therefore ineligible for all other benefits paid to regular full-time City employees. The Consultant agrees to abide by and comply with all of the City's Administrative Policies.

The Consultant shall acquire all insurance policies required for professional liability insurance, auto insurance, and/or health insurance. The Consultant shall be responsible for his own vehicle expenses and any other indirect costs incurred in fulfilling the stated contract requirements.

The foregoing Professional Services Contract supersedes all previous negotiations and

may not be modified except by a written order executed by the parties hereto.
IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers or representatives on the dates set forth below and supplemental terms and conditions are attached and incorporated herein and shown in Exhibit 1.

Approved as to form:

City of Broken Arrow

Lesli Myers
Assistant City Attorney

By: Michael L. Spurgeon
Michael L. Spurgeon, City Manager

Attest: [Signature]
City Clerk



Date 8/30/18

Terracon Consultants, Inc.

By: [Signature] AP

Attest: [Signature]
Corporate Secretary (Seal)

Date: 8-23-18

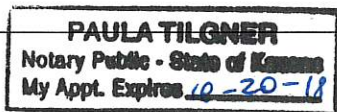


VERIFICATIONS

State of ~~Oklahoma~~ Kansas)
County of Johnson) §.

Before me, a Notary Public, on this 23rd day of August 20 18,
personally appeared Donald J. Vrana, known to me to be the (President,
Executive Vice-President, Corporate Officer, Member, Partner or Other: _____
(Please circle or specify)) of Terracon Consultants, Inc. to be the identical person who executed
the within and foregoing instrument, and acknowledged to me that he executed the same as his
free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:



Paula Tilgner
Notary Public

**CITY OF BROKEN ARROW
PROFESSIONAL ENVIRONMENTAL SERVICES
SPECIAL PROVISIONS ATTACHMENT**

**SPECIAL PROVISIONS
PROJECT NUMBER S.1609**

SP - 1.0 SCOPE OF THE PROJECT:

The scope of project will include Jurisdictional Waters of the U.S. Assessment including desk top review, site visit and report preparation; and USACE Permitting Assistance including requisite meetings with the USACE, data requests from the USACE and site visits in Broken Arrow, OK.

SP- 2.0 SERVICES OF THE CITY: THE CITY WILL:

- 2.1. Furnish to Consultant all data in its possession, and needed engineering guidance as necessary for the service provider to complete the contract requirements.
- 2.2. Designate in writing a person to act as its representative in respect to the work to be performed under this agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this agreement.

SP -3.0 SCOPE OF SERVICES: THE CONSULTANT SHALL:

Task 1: Jurisdictional WOUS Assessment - This task is presented in order to assist the client in remaining in compliance with Section 404 of the Clean Water Act (CWA) and/or Section 10 of the Rivers and Harbors Act (RHA) during possible future construction activities onsite. The results of this task will dictate the appropriate level of USACE permitting effort. To accomplish this task, Terracon will perform subtasks which include a desktop review, a site visit, and report preparation as described below.

Subtask 1.1: Desktop Review - Prior to visiting the site, background research will be conducted and will consist of locating and reviewing pertinent maps, aerial photographs, historic topographic maps, soil surveys, plant species data, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) maps, Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM), and other related data necessary for a desktop review of site conditions. This desktop review will assist Terracon in preliminarily identifying suspect aquatic resources on the site. Terracon will review topographic maps, aerial photographs, and floodplain maps to make a preliminary determination, based on Terracon's opinions and experiences, of the areas that could be potentially be categorized as jurisdictional WOUS and those that may not be jurisdictional. Appropriate sections of the digital topographic maps, aerial photographs, and floodplain maps, and proposed project boundaries will be projected and converted to the appropriate

Geographic Information System (GIS) format that is required for the fieldwork, mapping, and report preparation.

Subtask 1.2: Site Visit - A site visit will be performed to determine the existence and approximate locations of suspect WOUS, including wetlands on the site generally following the USACE 1987 Manual and the applicable USACE regional supplement. Terracon will identify potential WOUS, including traditional navigable waters, relatively permanent waters, non-relatively permanent waters, and wetlands that are adjacent, abutting, or isolated to these waters. The site visit will include completion of USACE wetland determination data forms with plant identification, notation of hydrologic indicators, and excavation of shallow soil profiles, as appropriate within each different vegetative community spread throughout the study area. Potentially jurisdictional waterbodies will be identified by delineating ordinary high water marks and then mapped using a GPS with sub-meter accuracy and the procedures required by the USACE. Following the site visit, exhibits showing the boundaries (polygons) and acreage and/or linear footage (if applicable) of all aquatic resources identified onsite during the site visit will be prepared. Terracon will provide a professional opinion regarding the likelihood for the identified aquatic resources to be considered jurisdictional and regulated by the USACE.

Subtask 1.3: Report Preparation - A report will be prepared for the project documenting the results of the Jurisdictional WOUS Assessment performed onsite. Terracon's comprehensive reports typically address the applicable framework, describe the assessment methodology, limitations and findings, and provide site-specific conclusions and recommendations as appropriate. The Jurisdictional WOUS Assessment report will include the following information, as applicable:

- a. Brief description of the project, methods/sampling procedures, and results as required by the USACE;
- b. A preliminary determination and description of the potentially jurisdictional WOUS and potentially non-jurisdictional aquatic resources identified on the study area;
- c. Acreage of the project area evaluated with boundaries indicated;
- d. Location of each observation point/data point/soil sample station;
- e. Wetland Determination Data Forms completed in accordance with USACE guidelines for each observation point/data point/soil sample station;
- f. Acreage and linear footage (if applicable) of each aquatic resource onsite and total potentially jurisdictional areas (suspect WOUS) and potentially non-jurisdictional aquatic resources including polygons of aquatic resources (mapped by GPS) shown on exhibits;
- g. Historical information (including topographic quadrangle maps, historic aerial photographs, FEMA maps, NWI maps, and soil surveys) to document the potential limits of USACE jurisdiction for the identified aquatic resources (if applicable);
- h. Professional opinions regarding the potential jurisdictional status of the identified aquatic resources with supporting documentation and rationale.

Deliverable: Prior to issuing the report, Terracon will provide to the client a summary of field observations and preliminary results/findings/opinions. An electronic copy of the Jurisdictional

WOUS Assessment report will be provided to the client for review. Upon incorporation of revisions, Terracon will provide an electronic copy of the final report to the client. The Jurisdictional WOUS Assessment report will be prepared in a manner to be easily attached and serve as a supplement to additional documentation which would be submitted to the USACE for review, concurrence, and authorization if necessary. Terracon will prepare a cover letter for the Jurisdictional WOUS Assessment report, summarizing the results of the WOUS investigation and assessing the appropriate Section 404 permitting mechanism and the level of potential coordination with the USACE, if any is required. This permitting assessment will be based on a preliminary alignment and proposed right-of-way width provided by the Client.

Task 2: Permitting Assistance

Terracon will provide the client with Nationwide Permit assistance through the USACE, including: requisite meetings with the USACE, data requests from the USACE, and site visits.

Subtask 2.1: USACE Pre-Application Meeting

Terracon recommends submitting a pre-application meeting request to the USACE Tulsa District prior to mobilizing for field investigations if resources are identified during the environmental constraints analysis that could trigger pre-construction notification under Nationwide Permit (NWP) 12 – Utility Line Activities. This will allow the Client and Terracon to meet with agency personnel and define the level of consultation necessary to permit the project in a timely manner. It is also a time where the level of effort for the archeological survey could be discussed with the USACE archaeologist.

Subtask 2.2: Non-notifying NWP 12 Memorandum

In the event that impacts to WOUS from construction of the proposed sewer line do not trigger pre-construction notification (PCN), Terracon will prepare a non-notifying NWP 12 memorandum. This memorandum will detail the applicability of the referenced NWP, the proposed project impacts, a NWP General/Regional Conditions checklist documenting compliance with the General Conditions of the NWP program and the Oklahoma/Tulsa District Regional Conditions. Accompanying the memorandum will be an updated set of strip maps documenting delineated aquatic features and proposed project impacts/avoidance areas.

Deliverable: One electronic copy of the Non-Notifying NWP 12 Memorandum and impacts maps (.pdf format) will be provided to the client. If requested, Terracon will provide one bound copy and one CD to the client.

Subtask 2.3: NWP 12 Pre-construction Notification

Should the proposed project result in impacts to WOUS that exceed the criteria for authorization under NWP 12 without a PCN, Terracon will assist the client in preparing pre-construction documentation and application submittal to the USACE Tulsa District. This task typically includes providing the preliminary delineation of aquatic features, ownership information, documentation of project impacts, project purpose and need, avoidance and minimization measures, documentation of compliance with Regional/General Conditions, construction drawings and figures, relevant background information, and proposed mitigation. This task does not include preparation of an

Individual Permit (IP) or a mitigation plan involving permittee responsible mitigation (PRM). Should the project dictate that either of these scopes are necessary, Terracon will provide the Client with an additional proposal to complete that work.

Deliverable: One electronic copy of the NWP 12 PCN Submittal (.pdf format) will be provided to the client for review. Upon client authorization and application signature by the project sponsor, Terracon will provide a bound copy of the submittal and a CD to the USACE Tulsa District for review. If requested, Terracon will provide one bound copy and one CD to the client.

Additional Services Beyond Base Service

The fees in this work scope include services describe in this proposal. Fees and work scopes for Threatened and Endangered Species surveys, Biological Assessment, and Cultural Resource Review, that may be required by the USACE, our client or other reviewers are not included. Furthermore, fees for preparing applicable state and/or local permits that may be required are not included in the work scope of this proposal. If necessary, budget estimates for additional services will be provided as the project scope evolves.

Exhibit 1 Supplemental Terms and Conditions

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.

Standard of Care/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.**

Site Access and Safety. City 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 third parties, including City's contractors, subcontractors, or other parties present at the site.