

IN THE VILLAGE OF CENTERTOWN, MISSOURI

Bill No. 0020-005

Ordinance No. 198

AN ORDINANCE AUTHORIZING THE CHAIRMAN TO ENTER INTO AN AGREEMENT WITH  
TERRACON CONSULTANTS FOR GEOTECHNICAL ENGINEERING SERVICES

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF CENTERTOWN, MISSOURI, AS  
FOLLOWS:

Section 1. The Board of Trustees for the Village of Centertown, Missouri, hereby authorizes Adam Brown as the Chairman of the Board of Trustees for the Village of Centertown, Missouri to enter into an agreement with Terracon Consultants for Geotechnical Engineering Services as it pertains to the construction site for a new Village of Centertown water tower. Same material terms and in substantially the same form as the attached agreement.

Section 2. Fee for this service is to be paid thru the DNR loan proceeds.

Section 3. This ordinance shall be in full force and effect from and after its passage by the Board of Trustees.

**FIRST READING HELD: April 14, 2020**

**SECOND READING HELD AND FINAL PASSAGE ON THIS 14<sup>th</sup> DAY OF April, 2020 BY THE FOLLOWING VOTE:**

		Aye	Nay
Adam Brown	<u>  x  </u>	_____	_____
Celine Whitaker	<u>  x  </u>	_____	_____
Heather Hunger	<u>absent</u>	_____	_____
Sherry Kempf	<u>  x  </u>	_____	_____
Paula Hinshaw	<u>  x  </u>	_____	_____

Signature on file  
Chairman, Board of Trustees

ATTEST:

Signature on file  
Village Clerk

April 6, 2020



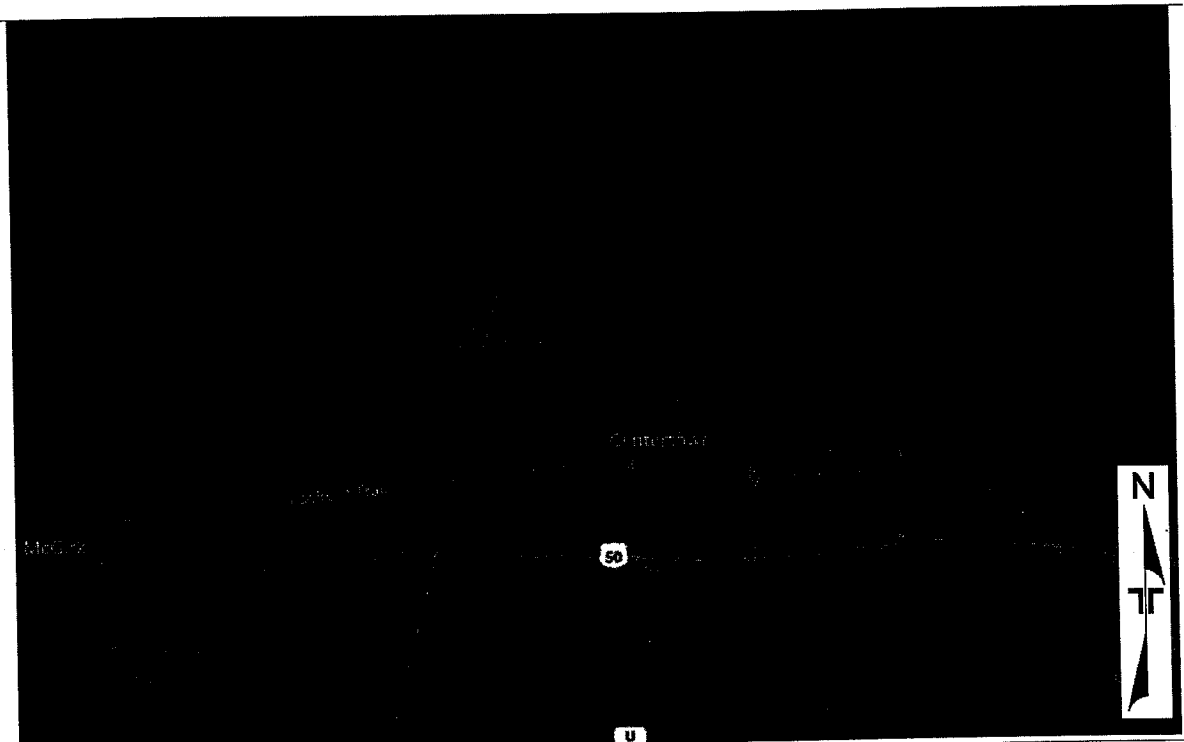
Village of Centertown MO  
1227 Broadway  
Centertown, MO 65023

Attn: Mr. Adam Brown - Chairman  
P: (573) 584 9572  
E: centertown.adam@gmail.com

Re: Revised Proposal for Geotechnical Engineering Services  
50,000-Gallon Elevated Spheroidal Tank  
12010 Main Street  
Centertown, Missouri  
Terracon Proposal No. P15205058.01

Dear Mr. Brown:

Village of Centertown MO can obtain reliable geotechnical information for your 50,000-Gallon Elevated Spheroidal Tank project by utilizing Terracon's vast resources. We have reviewed some of our nearby projects (see the image below) to help with preparing our geotechnical Scope of Services and expected geotechnical conditions.



Terracon projects within 3 miles of your 50,000-Gallon Elevated Spheroidal Tank project are shown in the image above.

Terracon Consultants, Inc. 11600 Lilburn Park Road St. Louis, Missouri 63146  
P [314] 692 8811 F [314] 692 8810 terracon.com

Environmental

Facilities

Geotechnical

Materials

Based upon our understanding, we anticipate the project to include the construction of a 50,000-gallon elevated spheroidal water tank. We understand the Village of Centertown may opt for a 60,000-gallon tank.

Exhibit A, attached to this proposal, provides more detail of our Project Understanding. Exhibits B & C, attached to this proposal, provide more details of our scope, fees, and consideration of additional services.

This proposal has been revised from our previous proposal, dated March 25, 2020, to incorporate comments from Mr. Greg Powell with the Missouri Department of Natural Resources. Terracon was requested to add the following language. "The Consultant (Terracon) agrees to take steps to ensure that disadvantaged business enterprises (DBEs) are given an opportunity to be utilized when possible as sources of suppliers, equipment, construction, and services under this agreement in accordance with the Drinking Water SRF Loan Program rules, as required by the award conditions of US EPA's Assistance Agreement with Missouri Department of Natural Resources. The Consultant acknowledges that the fair share percentages are 10 percent for WBE's and 5 percent for WBE's." Please note that due to the nature of this project and the current status of COVID-19, we do not plan to engage subconsultants, including DBEs or WBEs. We have provided an option to meet these goals, but it will increase our fee by approximately \$2,000 and result in an approximately 2 week delay in the report being issued. When authorizing this proposal, please indicate which option you have chosen.

Your authorization for Terracon to proceed in accordance with this proposal can be issued by signing and returning a copy of the attached Agreement for Services to our office. If you have any questions, please do not hesitate to contact us.

Sincerely,  
**Terracon Consultants, Inc.**


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## EXHIBIT A - PROJECT UNDERSTANDING

Our Scope of Services is based on our understanding of the project. We have not visited the project site to confirm the information provided. We request the design team verify this information prior to our initiation of field exploration activities.

### Site Location and Anticipated Conditions

<b>Parcel Information</b>	The project is located at 12010 Main Street in Centertown, Missouri. Latitude: 38.6193°N, Longitude: 92.4167°W
<b>Existing Improvements</b>	Grassy field 
<b>Existing Topography</b>	The site slopes down to the south with about 10 feet of relief
<b>Site Access</b>	We expect the site, and all exploration locations, are accessible with our ATV-mounted drilling equipment and support pick-up truck.
<b>Expected Subsurface Conditions</b>	Our experience near the vicinity of the proposed development and existing well log data indicates subsurface conditions consist of lean to fat clay with varying amounts of sand and gravel overlying the Cotter and Jefferson City Dolomite. Both units contain minor amounts of sandstone and mud seams. We anticipate rock depths between 5 to 10 feet below site grade.

### Planned Construction

<b>Information Provided</b>	Tower location (.kmz file) and tower drawings were provided by Mr. Gary Davis of Bartlett & West via email on March 20, 2020.
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<p><b>Project Description</b></p>	<p>The project will include the construction of a new 50,000-gallon elevated spheroidal water tank in the Village of Centertown, Missouri. We understand that a 60,000-gallon water tank is being considered as well.</p>
<p><b>Water Tower Construction</b></p>	<p>The proposed water tower will bear on a ringwall, spread footing foundation with an outside diameter of approximately 22 feet.</p>
<p><b>Finished Floor Elevation</b></p>	<p>Not provided. Anticipated to be within 5 feet of existing site grades.</p>
<p><b>Maximum Loads</b> (Estimated by Terracon)</p>	<ul style="list-style-type: none"> <li>■ Ringwall: 425 kips per linear foot (klf)</li> <li>■ Slabs: 250 pounds per square foot (psf)</li> </ul>
<p><b>Grading/Slopes</b></p>	<p>Final slope angles no steeper than 3H:1V (Horizontal: Vertical) are expected.</p>
<p><b>Below-Grade Structures</b></p>	<ul style="list-style-type: none"> <li>■ Concrete thrust block and spread footing</li> <li>■ Ringwall</li> </ul>
<p><b>Pavements</b></p>	<p>None anticipated</p>

## EXHIBIT B - SCOPE OF SERVICES

Our proposed Scope of Services consists of field exploration, laboratory testing, and engineering/project delivery. These services are described in the following sections.

### Field Exploration

Terracon will advance a total five (5) soil borings to auger refusal with an ATV-mounted drill rig using continuous flight augers (solid-stem and/or hollow-stem, as necessary, depending on soil conditions).

One (1) boring will be advanced at the center of the tank footprint will be sampled at 2.5-foot intervals in the upper 10 feet of the boring and at intervals of 5 feet thereafter. Soil sampling is typically performed using thin-walled tube and/or split-barrel sampling procedures. The split-barrel samplers are driven in accordance with the standard penetration test (SPT). The samples will be placed in appropriate containers, taken to our soil laboratory for testing, and classified by a Geotechnical Engineer. In addition, we will observe and record groundwater levels during drilling and sampling.

Upon encountering bedrock or refusal-to-drilling conditions, rock coring (using NQ/NX rock core barrel) will be performed at the boring located at the center of the tank. A minimum of 20 feet of rock coring will be performed at that location. Water will be used as a drilling fluid for rock coring and the spent water will be discharged on site. Our compensation and budget consider water is available on-site.

The remaining four (4) borings will be advanced to auger refusal without sampling to constrain the bedrock depth within the footprint of the proposed ringwall foundation.

Our exploration team will prepare field boring logs as part of standard drilling operations including sampling depths, penetration distances, and other relevant sampling information. Field logs include visual classifications of materials encountered during drilling, and our interpretation of subsurface conditions between samples.

**Boring Layout and Elevations:** We understand that Barlett & West will stake the center of tank location and provide Terracon with the coordinates and elevation of that location prior to our field exploration. The locations of the four probe borings will be measured from the staked center of tank location. Elevations will be obtained using a surveyor's level and grade rod, and the center of tank will be used as our benchmark elevation.

**Property Disturbance:** We will backfill borings with auger cuttings upon completion. Our services do not include repair of the site beyond backfilling our boreholes. Excess auger cuttings will be dispersed in the general vicinity of the borehole. Because backfill material often settles below the

## Proposal for Geotechnical Engineering Services

50,000-Gallon Elevated Spheroidal Tank ■ Centertown, Missouri

April 6, 2020 ■ Terracon Proposal No. P15205058.01



surface after a period of time, we recommend boreholes be periodically checked and backfilled, if necessary. We can provide this service, or grout the boreholes for additional fees, at your request.

### Safety

Terracon is not aware of environmental concerns at this project site that would create health or safety hazards associated with our exploration program; thus, our Scope considers standard OSHA Level D Personal Protection Equipment (PPE) is appropriate. Our Scope of Services does not include environmental site assessment services, but identification of unusual or unnatural materials encountered while drilling will be noted on our logs and discussed in our report.

Exploration efforts require borings (and possibly excavations) into the subsurface, therefore Terracon will comply with Missouri (Dig Rite) One-Call. Private utilities should be marked by the owner/client prior to commencement of field exploration. Terracon will not be responsible for damage to utilities not disclosed to us. If the owner/client is unable to accurately locate private utilities, Terracon can assist the owner/client by coordinating or subcontracting with a private utility locating service. Fees associated with the additional services are not included in our current Scope of Services and will require authorization prior to initiating. The detection of underground utilities is dependent upon the composition and construction of the utility line; some utilities are comprised of non-electrically conductive materials and may not be readily detected. The use of a private utility locate service would not relieve the owner of their responsibilities in identifying private underground utilities.

**Site Access:** Terracon must be granted access to the site by the property owner. By acceptance of this proposal, without information to the contrary, we consider this as authorization to access the property for conducting field exploration in accordance with the Scope of Services.

### Laboratory Testing

The project engineer will review field data and assign laboratory tests to better understand the engineering properties of the soil and rock strata. Based on the material's texture and plasticity, we will describe and classify soil samples in accordance with the Unified Soil Classification System (USCS). The anticipated laboratory testing includes the following:

- Water content
- Dry unit weight
- Atterberg limits
- Unconfined compressive strength of soil
- Unconfined compressive strength of rock

Boring log rock classification is determined using the Description of Rock Properties and using locally accepted practices for engineering purposes; petrographic analysis (if performed) may



reveal other rock types. Rock core samples typically provide an improved specimen for this classification.

## **Engineering and Project Delivery**

Results of our field and laboratory programs will be evaluated by a professional engineer. The engineer will develop a geotechnical site characterization, evaluate foundation alternatives, and develop geotechnical engineering design criteria for earth-related phases of the project.

Your project will be delivered using our **GeoReport®** system. Upon initiation, we provide you and your design team the necessary link and password to access the website (if not previously registered). Each project includes a calendar to track the schedule, an interactive site map, a listing of team members, access to the project documents as they are uploaded to the site, and a collaboration portal. The typical delivery process includes the following:

- Project Planning – Proposal information, schedule and anticipated exploration plan will be posted for review and verification
- Site Characterization – Findings of the site exploration
- Geotechnical Engineering – Recommendations and geotechnical engineering report

When services are complete, we upload a printable version of our completed geotechnical engineering report, including the professional engineer's seal and signature, which documents our services. Previous submittals, collaboration and the report are maintained in our system to allow for future reference and integration into subsequent aspects of our services as the project goes through final design and construction.

The geotechnical engineering report will provide the following:

- Boring logs with field and laboratory data
- Stratification based on visual soil and rock classification
- Groundwater levels observed during and after the completion of drilling
- Site Location and Exploration Plans
- Subsurface exploration procedures
- Description of subsurface conditions
- Recommended foundation options and engineering design parameters
- Estimated settlement of foundations
- Recommendations for design and construction of interior floor slabs
- Seismic site classification
- Subgrade preparation/earthwork recommendations
- Lateral earth pressure recommendations

## **Additional Services**

In addition to the services noted above, the following are often associated with geotechnical engineering services. Fees for services noted above do not include the following:

**Review of Plans and Specifications:** Our geotechnical report and associated verbal and written communications will be used by others on the design team to develop plans and specifications for construction. Review of project plans and specifications is a vital part of our geotechnical engineering services. This consists of review of project plans and specifications related to site preparation and foundations. Our review will include a written statement conveying our opinions relating to the plans and specifications' consistency with our geotechnical engineering recommendations.

**Observation and Testing of Pertinent Construction Materials:** Development of our geotechnical engineering recommendations and report relies on an interpretation of soil conditions. This is based on widely-spaced exploration locations, and assuming construction methods will be performed in a manner consistent with the recommendations in the geotechnical engineering report. We should be retained to conduct construction observations and perform/document associated materials testing for site preparation and foundation construction. This allows a more comprehensive understanding of subsurface conditions and documentation of construction, to confirm and/or modify (when necessary) the assumptions and recommendations made by our engineers.

**Environmental Assessments:** Our Scope for this project does not include, either specifically or by implication, an environmental assessment of the site intended to identify or quantify potential site contaminants. If the client/owner is concerned about the potential for such conditions, an environmental site assessment should be conducted. We can provide a proposal for an environmental assessment, if desired.

## EXHIBIT C - COMPENSATION AND PROJECT SCHEDULE

### Compensation

Based upon our understanding of the site, the project as summarized in **Exhibit A**, and our planned Scope of Services outlined in **Exhibit B**, our base fee is shown in the following table:

Subsurface Exploration, Laboratory Testing, Geotechnical Consulting & Reporting, without DBE and WBE Participation	\$6,275	
Subsurface Exploration, Laboratory Testing, Geotechnical Consulting & Reporting, with DBE and WBE Participation	\$8,275	

Additional services not part of the base fee include the following:

Private Utility Locate Service <sup>1</sup>	\$1,500	
Shear Wave Velocity Testing (Seismic Testing) <sup>2</sup>	\$2,500	
Plans and Specifications Review	TBD	
Construction Materials Testing Services	TBD	

1. If the owner/client is unable to accurately locate private utilities, we can subcontract a private utility locating firm and/or utilize geophysical equipment, if necessary. The detection of underground utilities is dependent upon the composition and construction of utility lines. Some utilities are comprised of non-electrically conductive materials and may not be readily detected. The use of a private locate service does not relieve the owner of their responsibilities in identifying private underground utilities.
2. Shear wave velocity testing can be performed, if requested, to provide a more accurate seismic site classification for the project site. This test is often less conservative and can sometimes result in a more favorable seismic site classification.

Our Scope of Services does not include services associated with site clearing, wet ground conditions, tree or shrub clearing, or repair of/damage to existing landscape or crops. If such services are desired by the owner/client, we should be notified so we can adjust our Scope of Services. If borings are performed when crops are planted, a crop damage agreement should be established between the Client and crop owner prior to subsurface exploration.

Unless instructed otherwise, we will submit our invoice(s) to the address shown at the beginning of this proposal. If conditions are encountered that require Scope of Services revisions and/or result in higher fees, we will contact you for approval, prior to initiating services. A supplemental

proposal stating the modified Scope of Services as well as its effect on our fee will be prepared. We will not proceed without your authorization.

### **Project Schedule**

We have developed a schedule to complete the Scope of Services based upon our existing availability and understanding of your project schedule. However, this does not account for delays in field exploration beyond our control, such as weather conditions, permit delays, or lack of permission to access the boring locations. In the event the schedule provided is inconsistent with your needs, please contact us so we may consider alternatives.

Project Planning	3 days <sup>3</sup>
Site Characterization	20 days <sup>3</sup>
Geotechnical Engineering	25 days <sup>3</sup>

1. Upon receipt of your notice to proceed we will activate the schedule component of our **GeoReport**<sup>®</sup> website with specific, anticipated calendar days for the three delivery points noted above as well as other pertinent events such as field exploration crews on-site, etc.
2. We will maintain a current calendar of activities within our **GeoReport**<sup>®</sup> website. In the event of a need to modify the schedule, the schedule will be updated to reflect our plans for delivery.
3. Add two weeks to these times for DBE and WBE participation.

## AGREEMENT FOR SERVICES

This **AGREEMENT** is between Village of Centertown ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Village of Centertown Water Tower project ("Project"), as described in Consultant's Proposal dated 03/25/2020 ("Proposal"), including but not limited to the Project Information section, 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 Proposal, including but not limited to the Scope of Services section ("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 make payment to the Consultant in accordance with Section 34.057, RSMo. Client shall pay compensation for the Services performed at the fees stated in the Proposal, including but not limited to the Compensation section, 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 \$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 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) 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 Missouri 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.
- 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.** Unless otherwise stated in the Proposal, 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. In addition, Consultant retains the right to stop work without penalty at any time Consultant believes it is in the best interests of Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to the coronavirus. Client agrees it will respond quickly to all requests for information made by Consultant related to Consultant's pre-task planning and risk assessment processes. Client acknowledges its responsibility for notifying Consultant of any circumstances that present a risk of exposure to the coronavirus or individuals who have tested positive for COVID-19 or are self-quarantining due to exhibiting symptoms associated with the coronavirus.
- 18. Subcontracting.** The Consultant agrees to take steps to ensure that disadvantaged business enterprises (DBEs) are given an opportunity to be utilized when possible as sources of supplies, equipment, construction, and services under this agreement in accordance with the Drinking Water SRF Loan Program rules, as required by the award conditions of US EPA's Assistance Agreement with Missouri Department of Natural Resources. The Consultant acknowledges that the fair share percentages are 10 percent for MBEs and 5 percent for WBEs.

Consultant: **Terracon Consultants, Inc.**  
By: \_\_\_\_\_ Date: **4/6/2020**  
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Client: **Village of Centertown**  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
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