

November 13, 2013



Mr. Matt Siders
City of Mount Vernon
201 7th Street NE
Mount Vernon, IA 52314

Telephone: 319-895-9513
E-mail: msiders@cityofmtvernon-ia.gov

RE: Phase I Environmental Site Assessment and Limited Site Investigation
City of Mount Vernon
730 1st Street SE
Mount Vernon, Iowa
Terracon Proposal No. P06130694

Dear Mr. Siders:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to City of Mount Vernon (client) to conduct a Phase I Environmental Site Assessment (ESA) and/or Limited Site Investigation (LSI) of the above-referenced site.

1.0 PROJECT INFORMATION

We understand the site is an approximately 2.45 acre area of land located at 730 1st Street SE in Mount Vernon, Iowa. Terracon further understands the City of Mount Vernon currently owns the site and utilized the site at various times for storage of fill dirt, crushed rock, concrete, asphalt, vehicles used for fire training and for parking city vehicles. If this is not accurate, or if you have additional useful information, please inform us as soon as possible.

2.0 SCOPE OF SERVICES

Task 1 – Base Phase I ESA Services

The ESA will be performed consistent with the procedures included in ASTM E 1527-05, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*. The purpose of this ESA is to assist the client in developing information to identify recognized environmental conditions (RECs - as defined below) in connection with the site as reflected by the scope of this proposal. If modifications to the scope of services are required, please contact us to discuss proposal revisions.



Terracon Consultants, Inc. 2640 12th St. SW Cedar Rapids, IA 52404
P 319-366-8321 F 319-366-0032 terracon.com

Environmental



Facilities



Geotechnical



Materials

Physical Setting

The physical setting for the site will be described based on a review of the applicable USGS topographic quadrangle map, USDA soil survey, and selected geologic reference information.

Historical Use Information

A review of selected historical sources, where reasonably ascertainable and readily available, will be conducted in an attempt to document obvious past land use of the site and adjoining properties back to 1940 or when the site was initially developed, whichever is earlier. The following selected references, depending on applicability and likely usefulness, will be reviewed for the site.

- Historical topographic maps
- Aerial photographs (approximate 10 to 15 year intervals)
- City directories (approximate 5 year intervals)
- Fire (Sanborn) insurance maps
- Property tax file information
- Site title search information, if provided by client
- Environmental liens, if provided by client
- Building department records
- Zoning records
- Prior environmental reports, permits and registrations; or geotechnical reports, if provided by the client

Pursuant to ASTM E 1527-05, the client should engage a title company or title professional to undertake a review of reasonably ascertainable recorded land title records and lien records for environmental liens currently recorded against or relating to the site. If the client is unable to provide land title records or environmental lien information, an abstract firm may be contracted by Terracon to develop a chain of title from a review of land title records for an additional fee. Documentation of environmental liens, if recorded, will be provided with the chain of title. Note, however, unless specifically requested within three days of project commencement, Terracon will rely on the client to provide land title records. **If land title records or environmental lien information are not provided for review in a timely manner, Terracon may conclude that the absence of records represents a significant data gap, which must be documented in the final report.**

The current owner or their representative will be interviewed to provide information regarding past uses of the site and information pertaining to the use of hazardous substances and petroleum products on the site. Additionally, a reasonable attempt will be made to interview past owners, operators, and occupants of the site to the extent that they are identified within the scope of the ESA and are likely to have material information that is not duplicative of information already obtained through the assessment process.

REC Definition

Recognized Environmental Conditions are defined by ASTM E 1527-05 as “the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property. The term includes hazardous substances or petroleum products even under conditions of compliance with laws. The term is not intended to include *de minimis* conditions that generally do not present a material risk of harm to the public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.”

Regulatory Records Review

Consistent with ASTM E 1527-05, outlined below are the following federal, state, and tribal databases, where applicable are typically reviewed for indications of RECs, and the approximate minimum search distance of the review from the nearest property boundary. Evaluating identified regulatory facilities for potential vapor intrusion conditions is outside the scope of this proposal. A database firm will be subcontracted to access governmental records used in this portion of the assessment. Additional federal, state, and local databases may be reviewed if provided by the database firm. Determining the location of unmapped facilities is beyond the scope of this assessment.

Governmental Records	Search Distance
Federal NPL Site List	1.0 mile
Federal NPL (Delisted) Site List	0.5 mile
Federal CERCLIS Site List	0.5 mile
Federal CERCLIS NFRAP Site List	0.5 mile
Federal RCRA Corrective Actions (CORRACTS) TSD Facilities List	1.0 mile
Federal RCRA Non-CORRACTS TSD Facilities List	0.5 mile
Federal RCRA Generators List	Site and Adjoining
Federal Institutional Control/Engineering Control Registries	Site Only
Federal ERNS List	Site Only
State and Tribal-Equivalent NPL Site Lists	1.0 mile
State and Tribal-Equivalent CERCLIS Lists	0.5 mile



Governmental Records	Search Distance
State and Tribal Landfill and/or Solid Waste Disposal Site Lists	0.5 mile
State and Tribal Leaking UST Lists	0.5 mile
State and Tribal Registered UST Lists	Site and Adjoining
State and Tribal Institutional Control/Engineering Control Registries	Site Only
State and Tribal VCP Site Lists	0.5 mile
State and Tribal Brownfield Site Lists	0.5 mile

Tribal databases will only be evaluated if the site is located in an area where a recognized tribe has jurisdiction for environmental affairs.

In addition to the database review and if customary practice for the site location, an attempt will be made to review reasonably ascertainable and useful local lists or records such as Brownfield sites, landfill/solid waste disposal sites, registered storage tanks, land records, emergency release reports, and contaminated public wells. A reasonable attempt will also be made to interview at least one staff member of any one of the following types of local government agencies: fire department, health agency, planning department, building department, or environmental department. As an alternative, a written request for information may be submitted to the local agencies.

If the results of the regulatory records review/local agency inquiry appear to warrant a review of applicable regulatory agency files, a cost estimate will be provided to the client for pre-approval. Review of regulatory files, when authorized, will be for the purpose of identifying RECs. Assessment of vapor intrusion conditions is outside the scope of a Phase I ESA. Please note that all requested files may not be available from regulatory agencies within the client's requested project schedule.

Site and Adjoining/Surrounding Property Reconnaissance

A site reconnaissance will be conducted to identify RECs. The reconnaissance will consist of visual observations of the site from the site boundaries and selected interior portions of the site. The site reconnaissance will include, where applicable, an interview with site personnel who the client has identified as having knowledge of the uses and physical characteristics of the site. Pertinent observations from the site reconnaissance will be documented including:

- Site description
- General site operations
- Aboveground chemical or waste storage
- Visible underground chemical or waste storage, drainage, or collection systems
- Electrical transformers
- Obvious releases of hazardous substances or petroleum products

The adjoining property reconnaissance will consist of visual observations of the adjoining/surrounding properties from the site boundaries and accessible public right-of-ways.

Report Preparation

Two hard copies and a PDF-formatted copy of the final report will be submitted that presents the results of this assessment, based upon the scope of services and limitations described herein. The final report will be signed by an environmental professional responsible for the Phase I ESA, and the report will contain an environmental professional statement as required by 40 CFR 312.21(d). Recommendations will be developed as part of the Phase I ESA scope of services. Prior to final report issuance, the client may request additional copies at a charge of \$50.00 per report copy.

The findings and conclusions presented in the final Phase I ESA report will be based on the site's current utilization and the information collected as discussed in this proposal. Please note that we do not warrant database or third party information (such as from interviewees) or regulatory agency information used in the compilation of reports.

Phase I ESAs, such as the one proposed for this site, are of limited scope, are noninvasive, and cannot eliminate the potential that hazardous, toxic, or petroleum substances are present or have been released at the site beyond what is identified by the limited scope of this ESA. In conducting the limited scope of services described herein, certain sources of information and public records will not be reviewed. It should be recognized that environmental concerns may be documented in public records that are not reviewed. This ESA does not include subsurface or other invasive assessments, business environmental risk evaluations, or other services not particularly identified and discussed herein. No ESA can wholly eliminate uncertainty regarding the potential for RECs. The limitations herein must be considered when the user of this report formulates opinions as to risks associated with the site. No warranties, express or implied, are intended or made.

An evaluation of significant data gaps will be based on the information available at the time of report issuance, and an evaluation of information received after the report issuance date may result in an alteration of our opinions and conclusions. We have no obligation to provide information obtained or discovered by us after the date of the report, or to perform any additional services, regardless of whether the information would affect any conclusions, recommendations, or opinions in the report. This disclaimer specifically applies to any information that has not been provided by the Client.

Additional Services Beyond Base ESA

At the direction of the client, additional services beyond the scope of the base Phase I ESA have not been included in Task 1.

Additional Services Not Included

The following services, although not specifically required by ASTM E 1527-05, may also be performed concurrently with ESAs and may be beneficial for the evaluation of environmental conditions and/or an evaluation of specific business environmental risks at the site. At your direction, these services have not been included as part of the scope of services for this ESA. Please note that this list is not all-inclusive. If you seek additional services, please contact us for a supplemental proposal and cost estimate.

- Limited Visual Observations for Asbestos
- Limited Asbestos Sampling
- Asbestos Survey (prior to renovation/demolition)
- Limited Visual Observations for Mold
- Limited Radon Records Review
- Limited Radon Testing
- Limited Visual Observations for Lead-Based Paint
- Limited Lead-Based Paint Survey
- Limited Lead in Drinking Water Records Review
- Limited Lead in Drinking Water Sampling
- Limited Wetland Review
- Limited Threatened/Endangered Species Review
- Limited Historic Properties/Archaeological Resources Review
- Vapor Encroachment Screening
- Regulatory Agency File Review

If the site is intended for future development, Terracon can also provide proposals for geotechnical investigations, geologic hazards (like growth faulting), construction materials testing, construction draw reviews and scope and budget review services.

Task 2 - Limited Site Investigation

The objective of the LSI is to gather additional information concerning the potential presence of indicator contaminants in onsite soil and groundwater that may have resulted from onsite operations. If a Phase I ESA is completed as proposed in Task 1 above, the scope of services for the LSI may be reduced or modified to accommodate the findings of the Phase I ESA.

Terracon will develop a generic safety plan to be used by our personnel during field services. At this time, we anticipate that OSHA Level D work uniform consisting of hard hats, safety glasses, protective gloves, and steel-toed boots will be required by all personnel in the work area. It may become necessary to upgrade this level of protection, at additional fee, while sampling activities are being conducted in the event that petroleum or chemical constituents are encountered in soils or groundwater which presents an increased risk for personal exposure. Additional cost will not be incurred without obtaining prior authorization from the Client.

Soil Borings

As part of this LSI, Terracon will drill four soil borings at the property for collection of soil and groundwater samples for laboratory analysis. Prior subsurface investigations completed by Terracon for a Preliminary Geotechnical Engineering Report at the property encountered groundwater and weathered limestone at a depth of approximately 15 feet. For purposes of this proposal, it is therefore assumed that the soil borings for this LSI will be drilled to a depth of approximately 20 feet or to refusal, whichever is shallowest. Soil samples will be collected with split barrel samplers from the top two feet of the borings and at 5-foot depth intervals thereafter.

Soil samples collected from augers and split barrel samplers will be logged to document lithology, color and relative moisture content and field screened with a photoionization detector (PID) to detect the presence of volatile organic vapors. The PID is a nonspecific total vapor detector and cannot be used to identify unknown substances; it can only provide a relative qualitative indicator of ionizable compounds in air.

Drill augers will be pressure washed prior to mobilization to the site. Split barrel samplers will be cleaned using an Alconox[®] detergent wash and potable water rinse prior to collection of each soil sample.

Temporary Monitor Wells

Temporary monitor wells will be constructed in the soil borings as follows:

- Installation of 10 feet of 1-inch diameter, 0.010-inch machine slotted poly-vinyl chloride (PVC) well screen with a threaded bottom cap; and

- Installation of 1-inch diameter, threaded, flush-joint PVC riser pipe to surface.

If necessary, the monitor wells may be left in place overnight to allow for accumulation of sufficient groundwater for collection of groundwater samples for laboratory analysis. If sufficient groundwater accumulates in the monitor wells, the wells will be developed by surging and removing groundwater until fluids appear relatively free of fine-grained sediment. Following collection of groundwater samples (if any) for laboratory analysis, the well piping and screen will be removed and the borings will be abandoned in accordance with state regulations and guidelines. Soil cuttings and purged groundwater will be left onsite in accordance with state-accepted protocols.

Soil and Groundwater Sampling Program

One soil sample will be collected from each soil boring for laboratory analysis from the zone exhibiting the highest contaminant concentrations based on odors and/or responses recorded from PID readings as determined in the field by the sampling professional. If soil impacts are not evident during drilling, a soil sample from immediately above the water table will be collected for laboratory analysis if groundwater is encountered. Groundwater samples will be collected following development of the temporary monitor wells as described above.

The soil and water samples will be placed in laboratory prepared containers, labeled, and placed on ice in a cooler which will be secured with a custody seal. The samples and completed chain-of-custody forms will be transported to the selected analytical laboratory for analysis within the standard turnaround time.

Laboratory Analytical Program

Soil and groundwater samples will be analyzed for concentrations of volatile organic compounds (VOCs), total extractable hydrocarbons (TEH) and Resource Conservation and Recovery Act (RCRA) metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver). The table below lists the number of samples to be submitted for laboratory analysis and the proposed analytical methods.

Parameter	Number of Samples (Soil/Groundwater)	Analytical Method
VOCs	4/4	EPA Method 8260
TEH	4/4	Iowa Method OA-2
RCRA Metals	4/4	EPA Method 6010/7471

A “trip blank” prepared by the analytical laboratory will accompany the sample containers to the field and on the return trip to the laboratory. The trip blank will be analyzed for VOCs for quality

assurance purposes to evaluate whether the soil and groundwater samples may have been subject to contamination from external environmental factors during transport. There is no charge to the client for analysis of the trip blank.

Report Preparation

Upon completion of site activities and receipt of the laboratory analytical results, a final report will be prepared for the site that will include the following:

- Documentation of field activities;
- Site plan showing site features with the boring location;
- Soil boring/monitor well logs;
- Analytical laboratory results; and,
- Data evaluation and presentation of findings.

Terracon's services will be performed in a manner consistent with generally accepted practices of the profession in similar studies in the same geographic area during the same period. Terracon makes no warranties, express or implied, regarding its services, findings, conclusions or recommendations. Please note that Terracon does not warrant the work of laboratories, regulatory agencies or other third parties supplying information used in the preparation of the report. These LSI services will be performed in accordance with the scope of work agreed with you, our client, as set forth in this proposal.

Findings and conclusions resulting from these services will be based upon information derived from onsite activities and other services performed under this scope of work; such information is subject to change over time. Certain indicators of the presence of hazardous substances, petroleum products, or other constituents may have been latent, inaccessible, unobservable, undetectable or not present during these services, and we cannot represent that the site contains no hazardous substances, toxic substances, petroleum products, or other latent conditions beyond those identified during this LSI. Subsurface conditions may vary from those encountered at specific borings or wells or during other surveys, tests, assessments, investigations or exploratory services; the data, interpretations, findings and our recommendations are based solely upon data obtained at the time and within the scope of these services.

Schedule

Services will be initiated upon receipt of the written notice to proceed. The final Phase I Environmental Site Assessment report will be submitted 15 business days after receipt of your written notice to proceed. The Limited Site Investigation report will be submitted within 5 days after receipt of the final laboratory reports.

In order to comply with the proposed schedule, please provide the following items at the time of notification to proceed.

- A signed Agreement for Services evidencing acceptance of this scope of services
- The completed ASTM E 1527-05 User Questionnaire, supplied as an attachment to this proposal
- Right of entry to conduct the assessment, including access to building interiors
- Notification of any restrictions or special requirements (such as confidentiality, scheduling, or on-site safety requirements) regarding accessing the site
- An accurate legal description and/or a diagram of the site such as a surveyor's plat map or scaled architect's drawing (if such diagrams exist)
- Current site owner, property manager, occupant information (including tenant list), and contact information for persons knowledgeable about the site history including current and historical use of hazardous substances and petroleum products on site (e.g., names, phone numbers, etc.)
- Copies of environmental reports, permits and registrations, and geotechnical reports that were previously prepared for the site
- Information relating to known or suspect environmental conditions at the site, including commonly known or reasonable ascertainable information within the local community about the site that is material to RECs in connection with the site
- Information about environmental liens and activity and use limitations for the site, if any
- Specialized knowledge or experience that is material to RECs in connection with the site, if any
- Knowledge that the purchase price of the site is significantly less than the purchase price of comparable properties
- Land title records

Please note that requested regulatory files or other information may not be provided to Terracon by the issuance date of the report. Consideration of information not received by the issuance date of the report is beyond the scope of this ESA.

Reliance

The ESA and LSI reports will be prepared for the exclusive use and reliance of City of Mount Vernon. Reliance by any other party is prohibited without the written authorization of the client and Terracon.

If the client is aware of additional parties that will require reliance on the reports, the names, addresses, and relationship of these parties should be provided for Terracon approval prior to the time of authorization to proceed. Terracon may grant reliance on the reports to those approved parties upon receipt of a fully executed Reliance Agreement (available upon request) and receipt of information requested in the Reliance Agreement. If, in the future, the client and Terracon consent to reliance on the reports by a third party, Terracon may grant reliance upon receipt of a fully executed Reliance Agreement, requested information and receipt of an additional minimum fee of \$250 per relying party.

Reliance on the reports by the client and all authorized parties will be subject to the terms, conditions, and limitations stated in the Agreement for Services, sections of this proposal incorporated therein, the Reliance Agreement, and reports. The limitation of liability defined in the Agreement for Services is the aggregate limit of Terracon's liability to the client and all relying parties.

Continued viability of the ESA report is subject to ASTM E 1527-05 Sections 4.6 and 4.8. If the ESA will be used by a different user (third party) than the user for whom the ESA was originally prepared, the third party must also satisfy the user's responsibilities in Section 6 of ASTM E 1527-05.

3.0 COMPENSATION

The scope of services described in Section B will be provided for the estimated costs shown in the table below in accordance with the fee Schedule included as Exhibit C.

Environmental Services	Fee
Base Phase I ESA Services - Lump Sum (Includes items outlined in Section 2.1. Cost to contract an abstract firm to develop a chain of title or environmental lien search is not included in this fee.)	\$2,250
Limited Site Investigation	\$3,500 - \$5,600

The fee is valid for 90 days from the date of this proposal and is based on the assumption that all field services will be performed wearing safety Level D personal protective equipment and that only one site visit per service will be made by Terracon personnel. The lump sum fee is based on the assumptions and conditions provided at the time of this proposal.

4.0 AUTHORIZATION

If this proposal meets with your approval, work may be initiated by returning an original copy of the attached Agreement for Services to our Cedar Rapids office. Project initiation may be expedited by sending a copy of the signed Agreement for Services via e-mail or facsimile.

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

Sincerely,

Terracon Consultants, Inc.



Daniel M. Green, CGP
Environmental Project Manager



Kirk R. Johnson, PG
Environmental Project Manager



Kurt S. Nilsson, CHMM
Environmental Department Manager

DMG/KRJ/KSN:N:\Proposal Documents\2013\P06130694\P06130694.City of Mt Vernon Phase I II.final.docx

Attachments: ASTM E 1527-05 User Questionnaire
 Agreement for Services

Copies to: Addressee (2)

ASTM E 1527-05 USER QUESTIONNAIRE

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Proposal No: P06130694

In order to qualify for one of the Landowner Liability Protections (LLPs) offered by the Small Business Relief and Brownfields Revitalization Act of 2001, the user must respond to the following questions. Failure to provide this information to the environmental professional may result in significant data gaps, which may limit our ability to identify recognized environmental conditions resulting in a determination that “all appropriate inquiry” is not complete. This form represents a type of interview and as such, the user has an obligation to answer all questions in good faith, to the extent of their actual knowledge.

Site Name: 730 1st Street East _____ Site Address: 730 1st Street East, Mount Vernon, Iowa ____

1) Are you aware of any environmental cleanup liens against the site that are filed or recorded under federal, tribal, state, or local law (40 CFR 312.25)? No Yes If yes, please explain.

2) Are you aware of any activity and use limitations (AULs), such as engineering controls, land use restrictions, or institutional controls that are in place at the site and/or have been filed or recorded in a registry under federal, tribal, state, or local law (40 CFR 312.26)? No Yes If yes, please explain.

3) As the user of this ESA, do you have any specialized knowledge or experience related to the site or nearby properties? For example, are you involved in the same line of business as the current or former occupants of the site or an adjoining property so that you would have specialized knowledge of the chemicals and processes used by this type of business (40 CFR 312-28)? No Yes If yes, please explain.

4) Does the purchase price being paid for this site reasonably reflect the fair market value of the site (40 CFR 312.29)? No Yes

If no, have you considered whether the lower purchase price is because contamination is known or believed to be present at the site (40 CFR 312.29)? No Yes If yes, please explain.

5) Are you aware of commonly known or reasonably ascertainable information about the site that would help the environmental professional to identify conditions indicative of releases or threatened releases (40 CFR 312.30)? No Yes If yes, please explain.

6) As the user of this ESA, based on your knowledge and experience related to the site, are there any obvious indicators that point to the presence or likely presence of contamination at the site (40 CFR 312.31)? No Yes If yes, please explain.

Please return this form with the signed and completed Agreement for Services.

ASTM E 1527-05 USER QUESTIONNAIRE

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Request for Information and Documentation

In addition to the specific questions outlined above, the user is requested to provide the following information and documentation, as available. ASTM requires that this information, if available, be provided to the environmental professional prior to the site visit.

Item Supplied "X"	Not Applicable, Not Available or Not Known "X"	Item Requested (See Proposal)	Contacts/Comments or Indicate Attachment
		Point of Contact for Access	Name/Phone:
		Current Site Owner	Name/Phone:
		Current Facility Operator	Name/Phone:
		Contacts for Prior Owners	Name/Phone:
		Contacts for Prior Occupants	Name/Phone:
		Access Restrictions	
		Notification of Special Requirements Regarding Confidentiality	
		Legal Description and Diagram / Survey of Site	
		Chain of Title with Grantor/Grantee Summary (back to 1940 or first developed use)	
		Reasons for Conducting ESA	

Please return this form with the signed and completed Agreement for Services.

ASTM E 1527-05 USER QUESTIONNAIRE

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Helpful Documents Checklist

Pursuant to ASTM E 1527-05 § 10.8, do you know whether any of the following documents exist related to the subject property and, if so, whether copies can and will be provided to the environmental professional? Check all that apply.

- | | |
|---|---|
| <input type="checkbox"/> Environmental site assessment reports | <input type="checkbox"/> Notices or other correspondence from any governmental agency relating to past or current violations of environmental laws with respect to the property or relating to environmental liens encumbering the property |
| <input type="checkbox"/> Environmental compliance audit reports | |
| <input type="checkbox"/> Geotechnical studies | |
| <input type="checkbox"/> Reports regarding hydrogeologic conditions on the property or surrounding area | <input type="checkbox"/> Registrations for underground injection systems |
| <input type="checkbox"/> Registrations for above or underground storage tanks | <input type="checkbox"/> Environmental permits/plans, solid waste permits, hazardous waste disposal permits, wastewater permits, NPDES permits, underground injection permits, SPCC plans |

Name (Authorized Client Representative)

Title

Signature

Date

Please return this form with the signed and completed Agreement for Services.

AGREEMENT FOR SERVICES

This AGREEMENT is between City of Mt. Vernon ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the City of Mt. Vernon ESA project ("Project"), as described in the Project Information section of Consultant's Proposal dated November 13, 2013 ("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. 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: **11/13/2013**
 Name/Title: **Kirk R. Johnson, P.G. / Environmental Project Manager**
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 Email: **krjohnson2@terracon.com**

Client: **City of Mt. Vernon**
 By: _____ Date: _____
 Name/Title: **Matt Siders /**
 Address: **201 7th Street NE**
Mt. Vernon, IA 52314
 Phone: **(319) 895-9513** Fax: _____
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Reference Number: P06130694