

STATE OF TEXAS                   §  
   §  
COUNTY OF FORT BEND       §

**RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Fort Bend County Fresh Water Supply District No. 1 (hereinafter "FW1"), a conservation and reclamation district created pursuant to Article XVI, Section 59, of the Texas Constitution, operating in accordance with Chapters 53 and 49 of the Texas Water Code, as amended.

**WITNESSETH:**

**WHEREAS**, Terracon Consultants, Inc. ("Terracon") is engaged by FW1 to provide geotechnical engineering services to FW1, including services related to the FW1 proposed Water Plant No. 2; and

**WHEREAS**, the County owns certain real property in Fort Bend County identified by Fort Bend Central Appraisal District Property ID as #R446960 and #R167359, (the "Property"), upon which FW1 desires to enter for the purpose of performing services consisting of field exploration, laboratory testing, and engineering/project delivery; and

**WHEREAS**, the County is willing to grant permission to Terracon, FW1, agents contractors, invitees and consultants to enter onto the Property in order to conduct such work, under the terms and conditions stated herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. The County grants to FW1, its agents, contractors, invitees and consultants a right of entry and license to enter upon the Property to perform necessary services, consisting of soil borings below ground surface at approximate planned locations on the Property pursuant to an agreement for Geotechnical Engineering Services executed by FW1 (the "Permitted Activities").
2. FW1's entry rights are specifically limited to the Permitted Activities and shall not include any other activities or any other portions of Property not necessary to perform the Permitted Activities. FW1 shall be responsible for any and all costs related to the Permitted Activities, including installation, operation and removal of equipment on the Property.
3. FW1 agrees to comply with all local, state and federal laws, rules and ordinances applicable to the Permitted Activities. FW1 further agrees to exercise due care in the performance of all Permitted Activities on the Site, and not to unreasonably interfere with the County's activities on the Site.

4. Insurance Requirements:

- (a) Prior to entering the Property, FW1 shall obtain and maintain throughout the term of this Agreement, a certificate of insurance indicating coverage in the amounts stated below. All policies shall be underwritten by insurance companies maintaining A.M. Best's ratings of A-VII or higher on insurance of the following types and minimum limits:
- (i) Workers' Compensation Insurance in accordance with the laws of the State of Texas. Substitute policies other than Workers' Compensation Insurance will not be allowed.
  - (ii) Liability Insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
  - (iii) Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
  - (iv) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
  - (v) FW1 is responsible to maintain fire and extended coverage insurance on all personal property belonging to FW1, its agents, contractors, invitees and consultants located on the Site.
- (b) Fort Bend County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Terracon shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- (c) Deliver to County, prior to entry into the Property, certificates or affidavits of such insurance.
- (d) FW1 and County hereby waive all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party may now or hereafter have by subrogation or otherwise against the other party for any loss or damage that may occur to the Property, FW1's personal property by reason of fire or other casualty, or by reason of any other cause except gross negligence or willful misconduct (thus including simple negligence of the parties hereto or agents, employees or contractors), that could have been insured against under the terms of (1) in the case of County, the standard fire and extended coverage insurance policies available in Texas at the time of the casualty and (2) in the case of Terracon, the fire and extended coverage insurance policy required to be

obtained and maintained under 4 (a); provided however, that the waiver set forth in this 4 (d) shall (i) be ineffective against any insurer of County or FW1 to the extent that the waiver is prohibited by the laws or insurance regulations of Texas or would invalidate any insurance coverage of County or Terracon and (ii) not apply to any deductibles on insurance policies carried by County or to any coinsurance penalty which County might sustain. County and Terracon hereby agree to cause (if available) an endorsement to be issued to their respective insurance policies recognizing this waiver of subrogation.

5. To the extent allowed by law, FW1 agrees to indemnify, defend and hold County, its employees, agents or contractors, harmless from and against any and all liability, damage, expense, claims, liens or judgments, including reasonable attorneys' fees, resulting from injury to person or damage to property resulting from or arising out of the activities of FW1, its agents, employees, contractors, or invitees, upon the Property or any property surrounding the Property, including without limitation, the Permitted Activities. This indemnification obligation shall survive the expiration or termination of this Agreement. County shall: provide prompt notice of any claim; reasonably cooperate with FW1 in the management and defense of covered claims; and allow Terracon to defend and manage any claim with employees, consultants, contractors and attorneys of its choosing.
6. The term of this Agreement shall be from the date on which this Agreement has been executed by the last party hereto ("Execution Date") to the expiration of ninety (90) days from the Execution Date. Upon expiration of this Agreement or upon termination by either party as provided herein, FW1 shall immediately remove any and all of its equipment from the Property and restore the Property and the roadway accessing the Property to the condition existing immediately prior to FW1's entry, reasonable wear and tear, excepted. It is FW1's duty to return the Property and the roadway accessing the Property to County without any impact of its operations to the Property.
7. FW1 shall not take any actions that unreasonably interrupt the normal operations of County on the Property. FW1 agrees that its Permitted Activities shall not cause interference to the use or enjoyment of the property of County and any licensees located at the Property or neighboring landowners. In the event that Terracon's equipment or Permitted Activities cause such interference to such use or enjoyment, Terracon agrees immediately to cease operations until such interference is removed by Terracon, at its sole expense.
8. This Agreement constitutes the entire understanding between the parties with respect to the activities contemplated by this Agreement. All prior agreements or understandings, whether oral or written, are superseded. This Agreement may be amended only by written agreement executed by the parties.
9. This Agreement shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year first above written.

FORT BEND COUNTY

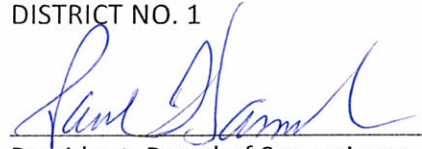
\_\_\_\_\_  
Robert E. Hebert, County Judge

\_\_\_\_\_  
Date

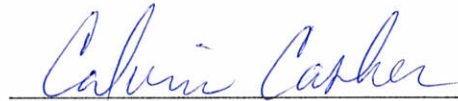
ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

FORT BEND COUNTY FRESH WATER SUPPLY  
DISTRICT NO. 1

  
\_\_\_\_\_  
President, Board of Supervisors,  
Paul Hamilton

1/12/18  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Secretary, Board of Supervisors