

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between The City of Norman (OWNER) and Meshek and Associates, LLC (CONSULTANT) for the following reasons:

1. OWNER intends to apply for a FEMA Hazard Mitigation Assistance Grant to construct The Vineyard Drainage Improvements (the Project); and,
2. OWNER requires certain professional planning, hydrologic and hydraulic analysis, GIS and engineering services in connection with the Project (the Services); and,
3. CONSULTANT is prepared to provide the Services.

In consideration of the promises contained in this Agreement, OWNER and CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be 15th day of OCTOBER, 2020.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Oklahoma.

ARTICLE 3 - SCOPE OF SERVICES

CONSULTANT shall provide the Services described in Attachment A, Scope of Services.

ARTICLE 4 - SCHEDULE

CONSULTANT shall exercise its reasonable efforts to perform the Services described in Attachment A according to the Schedule set forth in Attachment B.

ARTICLE 5 - COMPENSATION

OWNER shall pay CONSULTANT in accordance with Attachment C, Compensation. Invoices shall be due and payable upon receipt. OWNER shall give prompt written notice of any disputed amount and shall pay the remaining amount.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

OWNER shall be responsible for all matters described in Attachment D, OWNER'S Responsibilities. OWNER hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by OWNER to CONSULTANT. If OWNER does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to CONSULTANT, OWNER shall obtain a license or right to use, including the right to sublicense to CONSULTANT. OWNER hereby grants CONSULTANT the right to use the intellectual property associated with plans, documents or other materials it owns or has the right to use for the limited purpose of performing the Services. OWNER represents that CONSULTANT'S use of such documents will not infringe upon any third parties' rights.

ARTICLE 7 - STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.

ARTICLE 8 - INDEMNIFICATION AND LIABILITY

Indemnification. To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless OWNER, and OWNER'S officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of CONSULTANT or CONSULTANT'S officers, directors, members, partners, agents, employees, or Consultants. OWNER shall indemnify and hold harmless CONSULTANT and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations.

Survival. The terms and conditions of this Article shall survive completion of the Services, or any termination of this Agreement.

ARTICLE 9 - INSURANCE

During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance:

- a) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- b) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.
- d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

CONSULTANT shall, upon written request, furnish OWNER certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to OWNER. OWNER shall require all Project contractors to include OWNER, CONSULTANT, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as additional insureds on their General and Automobile Liability insurance policies, and to indemnify both OWNER and CONSULTANT, each to the same extent

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

CONSULTANT shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (b) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to CONSULTANT, to fulfill contractual responsibilities to OWNER or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to CONSULTANT in Attachment A, Scope of Services. In the event the OWNER requests CONSULTANT to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to CONSULTANT for review at least 15 days prior to the requested date of execution. CONSULTANT shall not be required to execute any certificates or documents that in any way would, in CONSULTANT's sole judgment, (a) increase CONSULTANT'S legal or contractual obligations or risks; (b) require knowledge, services or responsibilities beyond the scope of this Agreement; or (c) result in CONSULTANT having to certify, guarantee or warrant the existence of conditions whose existence CONSULTANT cannot ascertain.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because CONSULTANT has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project schedules, CONSULTANT'S opinion of probable costs and of Project schedules shall be made on the basis of experience and qualifications as a practitioner of its profession. CONSULTANT does not guarantee that proposals, bids, or actual Project costs will not vary from CONSULTANT'S cost estimates or that actual schedules will not vary from CONSULTANT'S projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, plans, drawings, and specifications prepared by CONSULTANT as deliverables pursuant to the Scope of Services are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by OWNER or others on modifications or extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by CONSULTANT for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT. OWNER shall indemnify and hold harmless CONSULTANT and its subconsultants against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle CONSULTANT to additional compensation at rates to be agreed upon by OWNER and CONSULTANT.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by CONSULTANT and furnished to OWNER as part of the Services shall become the property of OWNER; provided, however, that CONSULTANT shall have the unrestricted right to their use. CONSULTANT shall retain its copyright and Ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of CONSULTANT.

ARTICLE 14 - TERMINATION AND SUSPENSION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. OWNER may terminate or suspend performance of this Agreement for OWNER'S convenience upon written notice to CONSULTANT. CONSULTANT shall terminate or suspend performance of the Services on a schedule acceptable to OWNER, and OWNER shall pay CONSULTANT for all the Services performed. Upon restart of suspended Services, an equitable adjustment shall be made to CONSULTANT'S compensation and the Project schedule.

ARTICLE 15 - DELAY IN PERFORMANCE

Neither OWNER nor CONSULTANT shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either OWNER or CONSULTANT under this Agreement. CONSULTANT shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.

Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

ARTICLE 16 - NOTICES

Any notice required by this Agreement shall be made in writing to the address specified below:
OWNER:

Carrie J. Evenson, Ph.D., P.E., CFM
Stormwater Program Manager
City of Norman
P.O. Box 370
Norman, OK 73070

CONSULTANT:

Brandon Claborn, P.E., CFM
Meshek and Associates, LLC
CEO
1437 S. Boulder Ave., Suite 1550
Tulsa, OK 74119

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of OWNER and CONSULTANT.

ARTICLE 17 - DISPUTES

In the event of a dispute between OWNER and CONSULTANT arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution of the dispute by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association; provided, however, in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations. CONSULTANT affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is CONSULTANT'S policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. CONSULTANT further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-1 00 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

ARTICLE 19 - WAIVER

A waiver by either OWNER or CONSULTANT of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 20 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 21 - INTEGRATION

This Agreement, including Attachments A, B, C, and D incorporated by this reference, represents the entire and integrated agreement between OWNER and CONSULTANT. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

OWNER and CONSULTANT each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.

ARTICLE 23 - ASSIGNMENT

Neither OWNER nor CONSULTANT shall assign any rights or duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, CONSULTANT may assign its rights to payment without OWNER'S consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent CONSULTANT from engaging independent CONSULTANTS, associates, and subcontractors to assist in the performance of the Services.

ARTICLE 24 - NO THIRD PARTY RIGHTS

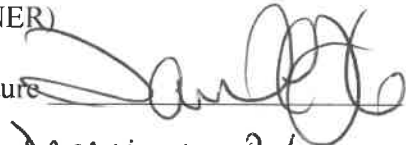
The Services provided for in this Agreement are for the sole use and benefit of OWNER and CONSULTANT. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OWNER and CONSULTANT.

IN WITNESS WHEREOF, OWNER and Meshek and Associates, LLC, have executed this Agreement.

DATED this 15th day of OCTOBER 2020.

The City of Norman
(OWNER)

Signature

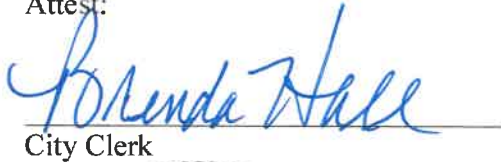


Name JARREL L. PYLE

Title CITY MANAGER

Date 10.15.20

Attest:


City Clerk

Meshek and Associates, LLC
(CONSULTANT)

Signature



Name Brandon Claborn

Title CEO

Date 9/23/20

Attest:


Secretary

Approved as to form and legality this 19 day of October 2020.

City Attorney



ATTACHMENT A SCOPE OF SERVICES

The CONSULTANT shall, except as otherwise provided for herein, furnish all services, labor, equipment and incidentals (SERVICES) as required for this AGREEMENT.

PART I- DESCRIPTION OF PROJECT

The CONSULTANT is to provide SERVICES in connection with the preparation of a FEMA Hazard Mitigation Assistance grant application for funds to prepare to prepare a FEMA Benefit Costs Analysis (BCA) for The Vineyard Drainage Improvements:

Project Extents:

The project area includes the Vineyard Subdivision east of N. Porter Ave and midway between E. Rock Creek Rd. and US HWY 77.

Project Exceptions:

This project does not include FEMA Hazard Mitigation Assistance Grant Management.

PART II - GENERAL PERFORMANCE REQUIREMENTS

The CONSULTANT agrees to the following as appropriate and when applicable SERVICES included in this AGREEMENT:

1. Project Administration – will include scheduling, invoicing, communication, progress meetings and general project management time.
2. Kickoff Meeting – the project will begin with a kickoff meeting with the consultant and City staff to discuss the primary concerns and goals of the project.
3. Prepare a Notice of Intent
4. Prepare the Grant Scope of Work.
5. Prepare NEPA and Section 106 documentation.
6. Use the current existing and proposed hydrologic and hydraulic model results to prepare a FEMA BCA for each building affected by flooding in up to the 0.2% (500-year) flood.
7. Develop Final Report – a final report including an updated conceptual cost estimate will be submitted to the City for review.
8. Develop and submit application to FEMA-GO.
9. Provide assistance through the OEM and FEMA review and if selected FEMA approval process.

PART III - MUTUAL AGREEMENTS

The OWNER and the CONSULTANT mutually agree:

- a. SERVICES to be performed by the CONSULTANT shall include and encompass those SERVICES identified in **PART I-II**.
- b. The CONSULTANT shall hold the OWNER as a confidential client. The CONSULTANT shall make no statements or publish any materials regarding any investigations to any party on behalf of the OWNER without prior written authorization from the OWNER. The CONSULTANT shall refer all questions regarding this AGREEMENT and the work defined herein to the OWNER.
- c. The CONSULTANT shall furnish all engineering services, labor, equipment, and incidentals as may be required to perform this AGREEMENT, except as may be otherwise specifically provided for herein.
- d. Then CONSULTANT shall sign the final product of CONSULTANT's efforts submitted to the OWNER and affix the appropriate Oklahoma seal as proof of Professional Engineer registration in the State of Oklahoma.
- e. The CONSULTANT and/or surveyor shall place his professional seal of endorsement and signature on all the documents, survey information and engineering data furnished to the OWNER when such is required by the Level or Type of Service defined by this AGREEMENT and additionally, as may be required by State Law.
- f. The CONSULTANT and it's sub-consultants are to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at its respective offices at all reasonable times, during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT, for inspection by the OWNER and copies thereof shall be furnished to the OWNER.

**ATTACHMENT B
 PROJECT SCHEDULE**

It is understood and agreed that the date of beginning, rate of progress, and the time of completion of SERVICES under this AGREEMENT are essential provisions of this AGREEMENT. It is further understood and agreed that the SERVICES under this AGREEMENT shall commence upon execution of the AGREEMENT between the OWNER and the CONSULTANT and after receipt of a written Notice to Proceed from the CONSULTANT. The parties mutually agree that time is of the essence in the performance of this AGREEMENT in order for the OWNER to take advantage of existing funding. The CONSULTANT agrees to provide SERVICES for each phase of the PROJECT as stated in **Attachment A - Scope of Services**, in accordance with the time frame as stated below:

TASK MILESTONE	ANTICIPATED COMPLETION DATE
Project Administration	October 2020-May 2021
Kickoff Meeting	October 2020
Prepare a Notice of Intent	October 2020
Prepare the Grant Scope of Work.	October 2020 – December 2020
Prepare NEPA and Section 106 documentation.	October 2020 - December 2020
Use the current existing and proposed hydrologic and hydraulic model results to prepare a FEMA BCA for each building affected by flooding in up to the 0.2% (500-year) flood.	October 2020 - December 2020
Develop Final Report – a final report including an updated conceptual cost estimate will be submitted to the City for review.	December 2020
Develop and submit application to OEM	December 15, 2020
Revise as necessary and submit application to FEMA-GO.	January 15, 2021
Provide assistance through the OEM and FEMA review and approval process.	December 30, 2021

The parties further agree that the CONSULTANT will meet this schedule using standards and procedures for their submissions consistent with those currently used by Engineers/Surveyors practicing in Oklahoma. This schedule excludes the governing agency review time (except as provided above) and anytime lost while the CONSULTANT is waiting for direction either by a government agency or the OWNER, and any excusable delays as described in ARTICLE 15 of the AGREEMENT.

Dates indicated are dependent upon timely review by the OWNER, environmental clearance, Right-of-Way acquisitions, utility relocations and other factors beyond direct control of the CONSULTANT.

**ATTACHMENT C
COMPENSATION**

The CONSULTANT agrees to perform the SERVICES identified in **Attachment A - Scope of Services**, in accordance with the limitations and conditions set forth in the AGREEMENT. The OWNER agrees, in accordance with the limitations and conditions set forth in the AGREEMENT to pay an amount not to exceed \$25,000 unless changed or modified by a mutually executed contact amendment between the OWNER and the CONSULTANT.

The OWNER shall pay the CONSULTANT for completion of the SERVICES of each task identified in **Attachment A - Scope of Services**, in accordance with the amounts stated below:

TASK	COMPENSATION
Prepare Notice of Intent	\$ 1,510.00
Prepare Grant Scope of Work	\$ 8,480.00
Prepare a FEMA BCA for each building affected by flooding in up to the 0.2% (500-year) flood in a final report.	\$ 7,490.00
Prepare NEPA and Section 106 documentation and expenses	\$ 1,554.00
Develop and submit application to OEM and FEMA for approval	\$ 1,690.00
Revise as necessary and submit application to FEMA-GO.	\$ 4,276.00
TOTAL COMPENSATION	\$25,000.00

An additional breakdown of the proposed fee is included as Exhibit C-1.

Payment claims or invoices for incremental work completed on each task may be submitted by the CONSULTANT to the OWNER for prompt payment on a monthly basis.

Final payment shall not be deemed to waive any rights or obligation of the OWNER or the CONSULTANT to this AGREEMENT.

EXHIBIT C-1

The Vineyard Neighborhood FEMA Hazard Mitigation Assistance Grant			
BRIC	Hours	Resource Hours/ Units	Contract
The Vineyard Neighborhood FEMA Hazard Mitigation Assistance Grant	247.0	247.0	\$25,000.00
Prepare Notice of Intent	10.0		\$1,510.00
<i>Planning</i>	6.0	6.0	\$940.00
<i>Design</i>	2.0	2.0	\$350.00
<i>H&H</i>	2.0	2.0	\$220.00
Prepare Grant Scope of Work	86.0		\$8,480.00
<i>Planning</i>	38.0	38.0	\$5,510.00
<i>GIS</i>	6.0	6.0	\$910.00
<i>H&H</i>	6.0	6.0	\$900.00
<i>Design</i>	6.0	6.0	\$1,160.00
Prepare Benefit Cost Analysis	62.0		\$7,490.00
<i>Planning</i>	16.0	16.0	\$2,080.00
<i>GIS</i>	26.0	26.0	\$3,610.00
<i>H&H</i>	12.0	12.0	\$1,800.00
NEPA and Section 106 Consultation	12.0		\$1,554.00
<i>Expense</i>	<i>Mileage</i>	231.0	\$134.00
<i>Planning</i>	12.0	12.0	\$1,420.00
Submit Application	17.0		\$1,690.00
<i>Planning</i>	13.0	13.0	\$1,690.00
OEM and FEMA Review and Approval	60.0		\$4,276.00
<i>Expense</i>	<i>Mileage</i>	897.0	\$516.00
<i>Planning</i>	16.0	16.0	\$2,080.00
<i>H&H</i>	4.0	4.0	\$440.00
<i>Design</i>	4.0	4.0	\$700.00
<i>GIS</i>	4.0	4.0	\$540.00

**ATTACHMENT D
OWNER'S RESPONSIBILITIES**

OWNER RESPONSIBILITIES

1. The OWNER shall furnish to the CONSULTANT all available information pertinent to PROJECT including previous reports, construction plans and any other data relative to design and construction of the PROJECT.
2. The OWNER shall be responsible for all permit fees.
3. The OWNER shall examine all studies, reports, sketches, estimates specifications, plan drawings, proposals and any other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the SERVICES of the CONSULTANT.
4. The OWNER shall designate in writing a person to act as its representative in respect to the work to be performed under this AGREEMENT, and such person shall have complete authority to transmit instructions, receive information, interpret, and define the OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this AGREEMENT.