

CONTRACT FOR RIGHT-OF-WAY ACQUISITION AND UTILITY RELOCATION SERVICES

This contract for right-of-way acquisition and utility relocation services (“Contract”) is entered into this ____ day of _____, 20__, by and between the City of Norman, a municipal corporation (“City”), and its successors in interest, the Norman Utilities Authority (“NUA”) and Pinnacle Consulting Management Group, Inc. (“Right-of-Way Consultant”)

WITNESSETH:

**CONTRACT NO. K-1314-103
RIGHT-OF-WAY ACQUISITION AND UTILITY RELOCATION SERVICES**

WHEREAS, the City/NUA requires the services of a right-of-way acquisition and utility relocation consultant to perform services in connection with miscellaneous City wide projects; and

WHEREAS, the Right-of-Way Consultant will provide services for these projects in accordance with this Contract; and

WHEREAS, it is the intent of the City/NUA to utilize the services contained in this contract on an as-needed basis for a period of one (1) year or longer as needed to complete any work started in that time frame from the date of the original Contract; and

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter relating to the project, the parties agree to the following:

1. **Definitions.** All items and phrases not expressly defined herein shall have their ordinary meanings, consistent with local and state law, except where the contract clearly indicates a different meaning. For purposes of this Contract, the following terms and phrases shall have the meaning subscribed herein:

- A. *Right-of-way acquisition* Those services associated with appraisal, negotiations, condemnation support, utility relocation, and other right-of-way acquisition-related services as requested by the City.
- B. *City/NUA* City of Norman, OK, and/or Norman Utilities Authority as it applies to the specific project for which services are rendered.
- C. *Engineer* The officer or/agent of the City/NUA in charge of overseeing the specific project for which services are be rendered.
- D. *Term of Contract* The term of this Contract shall run from the date of execution through one (1) year.

2. Basic Services. The Right-of-Way Consultant is hereby engaged and employed by the City to perform in accordance with good right-of-way acquisition practices and in the best interest of the City/NUA all the work as set out herein, including but not limited to the following:

A. Appraisals Services (for complex acquisitions only)

- (1) Perform an appraisal of each parcel, utilizing qualified and experienced personnel (approved in advance by the City/NUA). Provide a second appraisal in cases exceeding the amount required by ODOT where necessary to achieve federal funding.
- (2) Make a detailed inspection of the properties and make such investigations as are necessary to derive sound conclusions for the preparation of appraisal reports.
- (3) All appraisals will be prepared in accordance with State law and acceptable appraisal standards, and in accordance with judicially recognized methods of property evaluation.
- (4) Each written appraisal will be reviewed and sufficient copies submitted, not to exceed 4, to the City/NUA for authorization for the amount of the fair market value offer prior to the initiation of the negotiation process.
- (5) The appraisal reports shall be based upon plans as furnished by the City/NUA for said project, showing areas of land and interests therein to be acquired by the City/NUA, and showing each parcel designated by a parcel number. Copies of such plans will be furnished by the City to the Right-of-Way Consultant, and the individual appraisal report prepared by the Right-of-Way Consultant shall make use of the parcel number for proper referenced. The Right-of-Way Consultant shall review the project plans, including field reconnaissance for items such as property lines, improvements, out conveyances, etc., as necessary to familiarize the Right-of-Way Consultant with the project scope.
- (6) The City/NUA may provide appraisals to the Right-of-Way Consultant for use in acquisitions.

B. Negotiation and Miscellaneous Right-of-Way Services

- (1) Prepare paperwork associated with acquiring right-of-way from inception to completion including, correspondence and letters of transmittal; assistance in processing claims, purchase orders and requisitions for title companies, appraisers, filing fees and right-of-way payment; assist in preparation of City Council Agenda Item for acceptance of easements; establish and maintain right-of-way and utility project files for the CITY/NUA to be delivered the CITY at project close.

- (2) Perform abstracting and title search services through a search of courthouse records to determine ownerships, encumbrances, etc., as necessary to meet ODOT standard policy to achieve federal funding where applicable.
- (3) Provide ownership list with legal descriptions of the total property in a format required for the City of Norman to prepare a resolution declaring a Recoupment Project if so deemed.
- (4) Proof and resolve any discrepancies in Legal Descriptions provided by the City/NUA and/or their Design Consultants. Place all legal descriptions prepared by the City/NUA and/or other design consultant of each parcel on the appropriate City/NUA forms. On occasion prepare a legal description to resolver a change or addition to a pending negotiation in the interest of time or schedule of the project.
- (5) Conduct negotiations, including explanations to each owner regarding the acquisition of the property interest to be acquired and give the owner the opportunity to donate said property or interest therein.
- (6) Provide value find/appraisal waiver for non-complex acquisitions as necessary. Conduct appraisals where necessary in accordance with appraisal services herein.
- (7) Conduct negotiation with each owner for the acquisition of the property interest to be acquired and give the owner the opportunity to sell said property or interest therein.
- (8) Acquire any necessary donation certificates, lien waivers, mortgage subordinations, or tenant releases prepared on appropriate forms.
- (9) Coordinate relocation of signs, structures, encroachments, etc., from existing right-of-way as necessary.
- (10) **Secure** all documentation necessary to convey the title to the City/NUA and coordinate the examination of title with the City's Legal counsel.
- (11) Process all documentation for closing through the City/NUA and coordinate delivery of settlement checks to property owners (for Federally-funded projects).
- (12) Coordinate with the City/NUA relocation assistance payments and services as deemed appropriate (for Federally-funded projects).
- (13) If negotiations with the property owner fail, provide the City/NUA with a recommendation for condemnation and all copies needed for filing condemnation.

- (14) Attendance at meetings as requested by the City/NUA to explain any aspect of the right-of-way process.
- (15) Update ownership data, in accordance with ODOT standards, prior to final R/W approval.
- (16) Provide a complete set of files (copies) to ODOT required for R/W, encroachment, and utility clearances to obtain federal funding
- (17) Provide R/W staking on call as often as necessary for any or all property owners as requested during negotiations.

C. Condemnation Support

- (1) Assist the City's legal counsel in all condemnation actions required to obtain title to the required right-of-way, including expert testimony as to the fair market value of the property and damages to the remainder, as necessary. This service shall also include all pre-and post-trial activities involved in acquiring title to the property through eminent domain proceedings.

D. Relocation Assistance (Federally-funded projects)

- (1) Perform real estate acquisition services as directed by the City/NUA. The scope of such services shall be as stipulated by the City/NUA in a letter of engagement to the Right-of-Way Consultant.
- (2) Provide Letter(s) of Encroachment and/or Notice and Demand to the City/NUA as requested.

E. Utility Coordination (as requested by the City/NUA)

- (1) Meet one on one with each utility company as necessary to determine their need to relocate and assign relocation corridors both horizontal and vertical, conduct field meetings with each utility owner as necessary.
- (2) Review each relocation plan in sufficient detail and coordinate with each utility company to provide a relocation plan that doesn't conflict with other utility company's relocations or the roadway relocations.
- (3) Coordinate with each utility company to field verify by exposing each conflict and determining location both vertically and horizontally by actual survey.
- (4) Coordinate with City/NUA and/or their Design Engineer to provide electronic background drawings to each utility as needed.
- (5) Follow up and insure each utility company's plan is submitted to the ODOT resident engineer's office in a timely manner.

- (6) Coordinate with City/NUA and/or their Design Engineer to provide preliminary roadway plans to all utility companies.
- (7) Coordinate with City/NUA and/or their Design Engineer to provide final roadway plans to all utility companies and identify in writing all changes made to the roadway plans since the preliminary submittal that potentially conflict with their current relocation plans.
- (8) Coordinate and attend a pre-construction conference with each utility company before they begin relocation.
- (9) Coordinate with City/NUA and/or their Design Engineer to provide to each utility company a drawing that identifies all conflicts with the proposed roadway and other proposed utility relocations, which give specific depth elevation and horizontal control at conflict point identified.
- (10) Coordinate with each utility to provide reference control and/or stake their relocation assignment as necessary to insure the correct location in the field.
- (11) Visit the site often enough during utility relocations to verify each utility is in the correct location both horizontally and vertically by survey as their installed.
- (12) Coordinate and resolve all field changes for each utility during their relocation made for any reason including, impacts of other utilities, unforeseen conditions, constructability issues such as not being able to relocate because other utilities can't abandon their corridor because they need to remain in service until their new relocation is complete,
- (13) Monitor the relocation of facilities in accordance with project consultant schedules.
- (14) Prepare and distribute minutes of all office meetings and prepare and provide all necessary plans, drawings or sketches requested for utility clarification.
- (15) Verify all expenditures from all utility companies for accuracy prior to payment by the City/NUA.

F. Changes in Work

- (1) In any case where the Right-of-Way Consultant believes additional compensation and/or time is due for work and services not clearly covered by a project-specific work order, the Right-of-Way Consultant shall promptly notify the City/NUA in writing of its intention to negotiate for such additional compensation and/or time. The Right-of-Way Consultant shall give this notice prior to exceeding work order compensation and/or time limits. If such notification is not given, no claim for such extra compensation and/or time will be considered. Such notice by the Right-of-Way Consultant shall not in any

way be construed as proving the validity of the claim. The claim must be approved by the City/NUA. In such case where the claim is found to be just, it shall be allowed and paid as Extra Work in accordance with the Compensation paragraph of this Contract and hourly rates specifically identified therein.

- (2) Exhaustion of the administrative procedure outlined herein above is a prerequisite of and not a substitute for the right of judicial review of the dispute.

G. Maintenance of Records

- (1) Maintain a Project Database Program of all project right-of-way services.
- (2) Develop and maintain permanent records and files regarding all right-of-way activities. All files will be retained and kept in a secure place in the project office of the Right-of-Way Consultant until such time as the parcel activities are completed. Upon completion of all parcel activities, the file(s) will be turned over to the City/NUA.
- (3) All records and files shall be made available for inspection by authorized representatives of the City/NUA upon reasonable notice during regular office hours.
- (4) Maintain project scheduling information of all right-of-way acquisition activities to show progress on each parcel and project segment against established Milestone Schedules.
- (5) Develop and maintain detailed information of all costs associated with right-of-way acquisition and project management as necessary to support all billing statements.
- (6) Upon completion of the project, the Right-of-Way Consultant shall provide all project-related documents in an ordered manner and broken down by parcel.

3. No Extra Work. No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the City/NUA unless such work or service is first approved in writing by the City/NUA.

4. Compensation. Under the terms of this Contract, the Right-of-Way Consultant agrees to perform the work describe in the Basic Services scope of work, and the City/NUA agrees to pay the Right-of-Way Consultant as compensation for professional services described therein at the following hourly:

<u>Position</u>	<u>\$ Cost/Hr</u>
Project Manager	96.15
Appraiser	100.00
Right-of-Way Acquisition Agent	70.00
Relocation Agent	75.00

Utility Coordinator	100.00
Document Clerk/Title Research Specialist	55.00
Survey Staking Crew	78.00
Clerical	42.22

5. Payments

A. Invoices not disputed or pending requested additional documentation shall be submitted monthly and paid by City/NUA within thirty days of receipt. Invoices shall state actual time expended on services performed by the Right-of-Way Consultant and shall meet the standards of quality as established under this Contract. The City/NUA agrees to pay the Right-of-Way Consultant, as compensation for such right-of-way acquisition services as listed herein in accordance with the hourly rate schedule outlined in the Compensation paragraph of this Contract. Invoices shall be prepared and submitted by the Right-of-Way Consultant and be accompanied by all supporting data required by the City/NUA. Payment of any invoice for any work or services may not be deemed to be recognition of satisfactory performance of said work or services or a waiver of any right of the City/NUA or any obligation of the Right-of-Way Consultant should it be determined later that said work or services were negligently performed or provided or were not performed or provided in accordance with the standards required by this Contract.

B. The Right-of-Way Consultant shall present two (2) copies of the invoice with two (2) properly executed claim vouchers to the City/NUA for compensation and payment. Claims over \$25,000 require an Invoice Affidavit in accordance with state law. The City/NUA will review the invoice and claim voucher for payment. Should the City/NUA question or request additional documentation or disapprove all or a portion of any invoice, the Right-of-Way Consultant will be notified so that it may provide additional documentation sufficient to permit the invoice and claim to be paid, in whole or in part, provided that the City/NUA shall continue to pay all undisputed amounts as provided in Paragraph A above.

6. Indemnity. To the fullest extent permitted by law, the Right-of-Way Consultant agrees to indemnify and save harmless the City/NUA, their officers, agents and employees, from and against any and all loss of damage to property, injuries to or death of any person or persons and/or all claims, damages, suits, cost, expenses, liability, actions or proceedings of any kind or nature whatsoever, including, without limitation, Worker’s Compensation claims of or by anyone whomever, in any way resulting from or arising out of the Right-of-Way Consultant’s negligent acts, operations, errors and/or omissions under or in connection with this Contract, or the Right-of-Way Consultant’s use and occupancy of any portion of the project site, including, without limitation, negligent acts, operations, errors and/or omissions of the Right-of-Way Consultant’s officers, employees, representatives, suppliers, invitees, contractors, subcontractors or agents. The Right-of-Way Consultant shall promptly advise the City/NUA in writing, of any action, administrative or legal proceeding or investigation as to which this indemnification may apply. This section shall survive the expiration of the Contract. Provided, however, the Right-of-Way Consultant needs not release, defend, indemnify or save

harmless the City/NUA and or their officers, agents and employees, from damages or injuries resulting from the negligence of the City/NUA, their officers, agents or employees. It is understood that this indemnity and hold harmless provision is not limited by the insurance required under the provisions thereof.

CONSEQUENTIAL DAMAGES

LIMITATION OF DAMAGES: NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT TO THE CONTRARY, THE PARTIES HERETO MUTUALLY AGREE THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR LOSS OF INCOME, PROFIT OR SAVINGS OF ANY PARTY, INCLUDING THIRD PARTIES, ARISING DIRECTLY OR INDIRECTLY FROM THE PARTIES' RELATIONSHIP UNDER THIS CONTRACT OR APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO CLAIMS BASED ON CONTRACT, EQUITY, NEGLIGENCE, INTENDED CONDUCT, TORT OR OTHERWISE (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT).

7. Insurance. Required insurance shall be carried and maintained throughout the term of this Contract, and certificates of insurance shall contain a provision by the insurer(s) to the effect that the policy(s) may not be canceled, fail to be renewed, nor the limits decreased by endorsement without thirty (30) days prior written notice to the City/NUA and any participating public trust.
 - A. During the term of the Contract, the Right-of-Way Consultant shall provide, pay for, and maintain with companies satisfactory to the City/NUA and any participating public trust, the types of insurance described herein. All insurance shall be from responsible insurance companies eligible to do business in the State of Oklahoma. All liability policies (except Workers Compensation Insurance and professional liability policies) shall provide that the City/NUA and any participating public trust are named additional insured as to the operations of the Right-of-Way Consultant under this Contract and shall also provide the following Severability of Interest Provision.

With respect to claims involving any insured hereunder, except with respect to limits of insurance, each such interest shall be deemed separate from any and all other interest herein and coverage shall apply as though each such interest was separately insured.

Promptly after notice of award of this Contract, the insurance coverage and limits required must be evidenced by properly executed Certificates of Insurance on the forms acceptable to the City/NUA. The certificate must be signed by the authorized representative of the insurance company(s) shown in the certificate with proof that he/she is an authorized representative thereof. The required policies of insurance shall be performable in the Norman, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

No less than thirty (30) days prior written notice by registered or certified mail shall be given to the City/NUA of any cancellation, intent not to renew, or reduction in the policies' coverage except in the application of the aggregate limits provisions. In the event of a

reduction in any aggregate limit, the Right-of-Way Consultant shall immediately notify the City/NUA and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City/NUA requests a written statement from the insurance company(s) as to any impairments to the aggregate limit, the Right-of-Way Consultant hereby agrees to promptly authorize and have delivered to the City/NUA such statement. The Right-of-Way Consultant authorizes the City/NUA such to confirm all information so furnished as to the Right-of-Way Consultant's compliance with its bonds and insurance requirements the Right-of-Way Consultant's insurance agents, brokers, surety and insurance carriers. All insurance coverage of the Right-of-Way Consultant shall be primary to any insurance or self-insurance program carried by the City/NUA.

- B. No work or occupancy of the premises shall commence at the site unless and until the required certificates of insurance are provided and in effect and the written notice to proceed is issued to the Right-of-Way Consultant by the City/NUA.
- C. The insurance coverage and limits required of the Right-of-Way Consultant under this Contract are designed to meet the minimum requirements of the City/NUA. Such coverage and limits are not designed as a recommended insurance program for the Right-of-Way Consultant. The Right-of-Way Consultant alone shall be responsible for the sufficiency of its own insurance program. Should the Right-of-Way Consultant have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, the Right-of-Way Consultant should seek professional assistance.
- D. The Right-of-Way Consultant shall provide the City/NUA the following insurance:
- (1) Worker's compensation and employer's liability. The Right-of-Way Consultant shall maintain, during the term of the Contract, worker's compensation insurance as prescribed by the laws of the State of Oklahoma and employer's liability insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the site of the project, and in case any work is subcontracted, the Right-of-Way Consultant shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Right-of-Way Consultant. In the event any class of employees engaged in work performed under the Contract or at the site of the project is not protected under such insurance heretofore mentioned, the Right-of-Way Consultant shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.
 - (2) Commercial general liability insurance. The Right-of-Way Consultant shall maintain during the term of the Contract sufficient commercial general liability insurance to protect the Right-of-Way Consultant and any additional insured(s) from claims for bodily injury, including death, as well as from claims from property damages or loss, which may arise from activities, omissions and operations by the Right-of-Way Consultant or by any

subcontractor or by anyone directly or indirectly employed by or acting on behalf of or to the benefit of them. The amounts of such insurance shall be not less than the City/NUA’s maximum liability under the Government Tort Claims Act, 51 O.S. § 151 et seq., as amended from time to time and currently are:

- a. Property damage liability in an amount not less than Twenty-Five Thousand Dollars (\$25,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.
- b. All other liability in an amount of not less than One Hundred Twenty Five Thousand Dollars (\$125,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.
- c. Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

Note: If commercial general liability coverage is written in a “claims-made” form, the Right-of-Way Consultant shall also provide tail coverage that extends a minimum of one year from the expiration of this Contract.

- (3) Automobile liability insurance shall be maintained by the Right-of-Way Consultant as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles, with limits of not less than:

Bodily injury liability	\$125,000.00	Limit each person
Property damage liability	\$25,000.00	Limit each accident
	or	
Bodily injury and Property damage	\$1,000,000.00	Combined single limit each accident

- (4) Valuable paper insurance in an amount not less than \$25,000.00 to assure the restoration, in the event of their loss or destruction, of any field notes, drawings, documents, summaries, estimates, reports, specifications, data, as-built drawings, renderings, calculations, tracings, computer files, models or plans (hereinafter collectively referred to as “documents”) obtained or prepared as a part of this Contract and the delivery of said documents to the City/NUA upon completion, expiration, cancellation or termination of this Contract. The City/NUA is to be named as loss payee for its interest only.
- (5) Professional liability insurance. Before this Contract may become effective, the Right-of-Way Consultant shall provide the City/NUA with a certificate of

insurance evidencing the Right-of-Way Consultant's coverage under a Professional Liability Insurance Policy in an amount not less than \$100,000.00 aggregate annual limit of liability. Such insurance shall be maintained for a period of two (2) years after the completion of construction of any project where services are rendered under this contract. Any lapse of insurance coverage is declared a breach of this Contract. The City/NUA may, at its option, suspend this Contract until there is full compliance with this paragraph "Insurance" or terminate this Contract for nonperformance.

8. Termination for Convenience. The City/NUA may terminate this Contract, in whole or in part, for the City/NUA's convenience. The City/NUA may terminate by delivery or a notice to the Right-of-Way Consultant, pursuant to paragraph "Notices" herein.

Upon receipt of the notice of termination, the Right-of-Way Consultant shall (1) immediately discontinue all work and services affected (unless the notice directs otherwise, and (2) upon payment for work performed, deliver to the City/NUA all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated in performing this Contract, whether complete or incomplete unless the notice directs otherwise. In no event shall Right-of-Way Consultant be liable for any use of its incomplete work product by City/NUA or any other third Party.

Upon termination for the convenience by the City/NUA, the City/NUA shall pay the Right-of-Way Consultant for all undisputed work and services rendered and shall reimburse Right-of-Way Consultant for its reasonable costs incurred in effecting the termination, up to the time of the notice of termination, in accordance with the terms, limits and conditions of this Contract and as further limited by the not-to-exceed amounts set out in this Contract.

The rights and remedies of the City/NUA provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

Termination herein shall not terminate or suspend any of the required provisions of paragraph "Indemnity" or "Insurance" of this Contract

9. Notices. All notices given pursuant to this Contract shall be in writing, delivered or mailed by United States mail, postage prepaid or faxed (with hard copy follow up by mail or delivery) and addressed as follows:

To the City/NUA:

The City of Norman
The Norman Utilities Authority
201-A West Gray
Norman, Oklahoma

Address shall include specific Attn: to the Department and person representing the City/NUA as overseeing the specific City/NUA project for which services are being

rendered, telephone numbers and FAX number shall also be to the specific department and person for which services are being rendered.

To the Right-of-Way Consultant:

Pinnacle Consulting Mgmt. Group, Inc.
4516 N.W. 36th St., Ste. 100
Oklahoma City, OK 73122

The address of any person or party may be changed by notice to the other party, given in the manner described above. All such notices shall be deemed received when delivered.

10. **Stop Work.** Upon notice to the Right-of-Way Consultant, the City/NUA may issue a stop work order suspending the performance of work and/or services under this Contract. The stop work order shall not terminate or suspended any of the required provisions of paragraph "Indemnity" and/or "Insurance" of this Contract. In the event the City/NUA issues a stop work order to the Right-of-Way Consultant, the City/NUA will provide a copy of such stop work order to the contractor.
11. **Compliance with Laws, Ordinances, Specifications and Regulations.** The Right-of-Way Consultant shall comply with all existing federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the work and/or services provided by this Contract.
12. **Records and Accounts.** During the term of this Contract and continuing for a period the longer of two (2) years after the final acceptance of the construction of the last project for which work was done under this contract, or until the final resolution of any outstanding disputes between the City/NUA and the Right-of-Way Consultant or the contractor(s) on the project, the Right-of-Way Consultant shall maintain: all documents, notes, drawings, specifications, reports, estimates, summaries, renderings, models, photograph, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract that have not been submitted to the City/NUA subsequent to final completion of the project and its internal accounting records, and other supporting documents pertaining to the claims and/or invoices for costs of work and/or services of this Contract.

The Right-of-Way Consultant must maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Right-of-Way Consultant shall permit periodic audits by the City/NUA and the City/NUA's authorized representative. The periodic audit of the records in support of claims and invoices for the Contract shall be performed at times and places mutually agreed upon by the City/NUA and Right-of-Way Consultant. Agreement as to the time and place for audits may not be unreasonable withheld.

ELECTRONIC MEDIA

- A. **Limit Use to Hard Copies.** As a component of the Services provided under this Contract, Right-of-Way Consultant may deliver electronic copies of certain documents or data (the "Electronic Files") in addition to printed copies (the "Hard Copies") for the convenience

of the City/NUA. City/NUA and its consultants, contractors and subcontractors may only rely on the Hard Copies furnished by Right-of-Way Consultant to City/NUA. If there is any discrepancy between any Electronic File and the corresponding Hard Copy, the Hard Copy controls.

- B. **Acceptance Procedure.** City/NUA acknowledges that Electronic Files can be altered or modified without Right-of-Way Consultant's authorization, came become corrupted and that errors can occur in the transmission of such Electronic Files. City/NUA agrees that it will institute procedures to preserve the integrity of the Electronic Files received from Right-of-Way Consultant until acceptance. **All project electronic files shall be maintained by the consultant for the same time frame in accordance with item 12 Records Accounts immediately preceding the paragraph above this section title Electronic Media.** Subsequent to that the City/NUA further agrees that it will review any Electronic Files received thereafter within a reasonable timeframe and conduct acceptance tests within one hundred and twenty (120) days, after which period City/NUA shall be deemed to have accepted the Electronic Files as received. Right-of-Way Consultant will undertake commercially reasonable efforts to correct any errors in the Electronic Files detected within said time frame. Right-of-Way Consultant shall not be responsible to maintain the Electronic Files after acceptance by City/NUA.
- C. **No Warranty of Compatibility.** Right-of-Way Consultant does not warrant or represent that the Electronic Files will be compatible with or useable or readable by systems used by City/NUA or its consultants, contractors and subcontractors. Right-of-Way Consultant is **not** responsible for any problems in the interaction of the Electronic Files with other software used by City/UA or its consultants, contractors and subcontractors.
13. Reporting to the City/NUA. The Right-of-Way Consultant shall report to the City/NUA on a regular monthly basis and on an as needed basis.
14. Prohibition Against Collusion. The Right-of-Way Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Right-of-Way Consultant to solicit or secure this Contract. The Right-of-Way Consultant further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Right-of-Way Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
15. Work Order. A project-specific work order for each right-of-way acquisition project will be provided to the Right-of-Way Consultant by the City/NUA upon written receipt of the Right-of-Way Consultant's project proposal, time for completion, and estimate of cost for services to be performed. The City/NUA and the Right-of-Way Consultant will determine a mutually agreed upon number of calendar days for completion of each right-of-way acquisition project. The services of the Right-of-Way Consultant are to commence upon the date set out in the work order and be completed in the number of mutually agreed upon number of calendar days. If the Right-of-Way Consultant cannot perform the work and/or services within the time provided, and upon the submission by the Right-of-Way Consultant of a request in writing to the City/NUA, indicating the length of extension required to perform a task, the City/NUA may grant a reasonable extension time. The request from the Right-of-Way

Consultant shall state the reason for the extension request, along with evidence showing that the Right-of-Way Consultant is unable to complete this work in the time specified in the work order for reasons beyond its control. The Right-of-Way Consultant is prohibited from claiming damages for delays and extensions of time.

16. Ownership of Documents. All documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, surveys results, plans and any other materials produced, created or accumulated in performing this Contract, are and shall remain the property of the City/NUA and may be reproduced, distributed and published in whole or part without permission or any additional payments or fees to the Right-of-Way Consultant. Reuse of said documents by the City/NUA shall be at the City/NUA's risk and responsibility and not that of the Right-of-Way Consultant. The parties may use any portions of said documents at their own risk and responsibility. During preparation of design documents, the Right-of-Way Consultant shall do weekly backups of CADD computer files and maintain said backups in a safe and secure off-site location. These backup CADD computer files are the property of the Right-of-Way Consultant.
17. References Not Incorporated The use of language or definitions from the Federal Acquisition Regulations, the ("FAR"), the American Institute of Architects ("AIA") or any other publication, is not intended to adopt by reference or otherwise any or all of the language, definitions, regulations or publications or any interpretation thereof.
18. Standard of Care. In providing the work and services herein, the Right-of-Way Consultant shall maintain during the course of this Contract the standard of reasonable care, skill, diligence and professional competency for such work and/or services. The Right-of-Way Consultant agrees to require all of its consultants, by the terms of its consultant's contracts, to provide services at the same standards of reasonable care, skill, diligence and professional competence required of the Right-of-Way Consultant.
19. Subconsultants. The Right-of-Way Consultant agrees to submit for approval by the City/NUA, prior to their engagement, a list of any sub consultants or subcontractors the Right-of-Way Consultant intends to engage to perform work and/or services related to this Contract. Such approval will not be unreasonable withheld. The Right-of-Way Consultant shall notify the City/NUA and seek pre-approval of any substitutions or changes in subconsultants or subcontractors.
20. Non-discrimination. In connection with the performance of work and/or services under this Contract the Right-of-Way Consultant agrees as follows:
 - A. The Right-of-Way Consultant shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). The Right-of-Way Consultant shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such action shall include, but not limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or

cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. The nondiscrimination shall agree to post in conspicuous places, available to employees and applicants for employment, all notices applicable by law.

- B. In the event of the Right-of-Way Consultant's noncompliance with this nondiscrimination clause, this Contract may be suspended, canceled or terminated by the City/NUA. The Right-of-Way Consultant may be declared by the City/NUA ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by the Right-of-Way Consultant.
 - C. The Right-of-Way Consultant agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Contract.
21. Assignment. Inasmuch as this Contract is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the Right-of-Way Consultant to provide professional and personal services to the City/NUA, the parties agree that the Right-of-Way Consultant may not assign its obligations, rights or interest in this Contract except as set forth in paragraph "Termination for Default" subparagraph B.
22. Termination for Default. The City/NUA may cancel this Contract in whole or in part, for failure of the Right-of-Way Consultant to fulfill or promptly fulfill its obligations under this Contract.
- A. After due notice and thirty (30) days within which to correct the default, this Contract may be terminated by either party for default upon fourteen (14) days written notice should the other party fail substantially to perform in accordance with the Contract terms through no fault of the party initiating the termination.

- B. If this Contract is terminated by reason of a default of the Right-of-Way Consultant prior to the completion of this project, regardless of the reason for said termination, the Right-of-Way Consultant shall immediately assign to the City/NUA any contracts and/or agreements relative to this project entered into between the Right-of-Way Consultant and its subcontractors and sub consultants, as the City/NUA may designate in writing and with the consent of the subcontractors and sub consultants so designated. With respect to those contracts and/or agreements assigned to and accepted by the City/NUA, the City/NUA shall only be required to compensate such subcontractors and sub consultants for compensation accruing to such parties under the terms of their agreements with the Right-of-Way Consultant from and after the date of such assignment to acceptance by the City/NUA. All sums claimed by such Right-of-Way Consultant to be due owing for services performed prior to such assignment and acceptance by the City/NUA shall constitute a debt between the Right-of-Way Consultant and affected subcontractors and sub consultants, and the City/NUA shall in no way be deemed liable for such sums. The Right-of-Way Consultant shall include this provision and the City/NUA's rights and obligations hereunder in all agreements or contract entered into with the Right-of-Way Consultant's subcontractors and sub consultants.
- C. Termination herein shall not terminate or suspend any of the required provisions of the paragraph "Indemnity" or "Insurance" of this Contract.
23. Renewal. Unless written notification of termination or renegotiations of any or all portions of this contract, including unit costs, is given by the City of Norman/NUA or the Construction Right-of-Way/Utility Coordination Consultant at least sixty (60) days prior to the expiration date of this contract, the contract shall be renewed and provisions thereof shall continue in full force and effect for a twelve (12) month period, with automatic renewal to apply to each successive twelve month period thereafter, not to exceed a total of sixty (60) months for the duration of the entire contract. At each renewal, unit prices may be adjusted by Consumer Price Index for All Urban Consumers (CPI-U) for the South by the Bureau of Labor Statistics, U.S. Department of Labor for the preceding twelve (12) months.

To this end, no provision of this contract, or of any such aforementioned document shall be interpreted or given legal effect to create an obligation on the part of the City of Norman/NUA to third persons, including, by way of illustration, but not exclusion, sureties upon performance bond, payment bonds, or other bonds, assignees of the Construction Right-of-Way/Utility Coordination Consultant, subcontractors, and persons performing labor, furnishing material or in any way contributing or assisting in performance of obligations by the Construction Right-of-Way/Utility Coordination Consultant; nor shall any provisions be interpreted or given legal effect to afford a defense against any obligation owed or assumed by such third person to the City of Norman/NUA or in any way to restrict the freedom of the City of Norman/NUA to exercise full discretion in its dealings with the Construction Right-of-Way/Utility Coordination Consultant.

24. Time Is of the Essence. Both the City/NUA and the Right-of-Way Consultant expressly agree that time is of the essence with respect to this Contract, and the time for performance of each task established by the work orders shall be made a part of this Contract and shall be strictly

observed and enforced. Any failure on the part of the City/NUA to timely object to the time of performance shall not waive any right of the City/NUA to object at a later time.

25. No Damage for Delay. No payment, compensation or adjustment of any kind (other than an approved extension time) shall be made to the Right-of-Way Consultant for damages because of hindrances or delays from any cause in the progress of the work, whether such hindrances or delays be avoidable or unavoidable. The Right-of-Way Consultant agrees that it will make no claim for compensation or damages for any such delays and will accept as full satisfaction for such delays the extensions of time.
26. Local Business Utilization Report. The Right-of-Way Consultant agrees to submit a Local Business Utilization (“LBU”) Report to the City/NUA upon request within fourteen (14) days from the date of this Contract, to include the following information:
 - A. A list identifying each of its subcontractors and sub-consultants;
 - B. The location of the principal of business of each sub-consultant or subcontractor;
 - C. The status of each sub consultant or subcontractor as local, small, disadvantaged, minority or otherwise;
 - D. The general scope of work to be performed by each sub-consultant or subcontractor; and
 - E. The dollar amount of each subcontract.
27. Severability. In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Contract.
28. Entire Agreement. This Contract, including its Exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of the City/NUA and the Right-of-Way Consultant concerning the Contract. Neither the City/NUA nor the Right-of-Way Consultant has made or shall be bound by any agreement or any representation to the other concerning this Contract which is not expressly set forth herein.
29. Amendment. This Contract may be modified only by a written amendment of subsequent date hereto approved by the City/NUA and the Right-of-Way Consultant’s scope of work is increased or changed so as to materially increase the need for right-of-way acquisition services in excess of the not-to-exceed total compensation, the Right-of-Way Consultant may seek to amend this Contract.
30. Execution in Counterparts. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
31. Descriptive Headings. The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Contract.
32. Construction and Enforcement. This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this

Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.

- 33. Survival of Representations. All representations and covenants of the parties shall survive the expiration of the Contract.
- 34. Parties Bound. This Contract shall be binding upon and inure to the benefit of all parties. This Contract is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.
- 35. Venue of Actions. The parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the district court of the appropriate County.
- 36. Effective Date. The effective date of this Contract shall be the date of execution of this Contract by the City/NUA.

In Witness Whereof, this Contract was executed and approved by the City of Norman this _____ day of _____, 20__.

ATTEST:

Jennifer Harrison
Secretary

[Signature]
President/Principal

Approved as to form and legality this 18th day of February 2018.

[Signature]
City Attorney

In Witness Whereof, this Contract was approved and executed by the City of Norman and the Norman Utilities Authority this _____ day of _____, 20__.

ATTEST:

The City of Norman

City Clerk/Secretary

Mayor/Chairman