

AGREEMENT FOR ON-CALL ENGINEERING SERVICES

This AGREEMENT between the City of Norman/Norman Utilities Authority (OWNER) and Garver, LLC. (ENGINEER)

WITNESSETH

WHEREAS, the OWNER requires a registered ENGINEER to perform SERVICES in connection with miscellaneous City-wide PROJECT(S); and

WHEREAS, the OWNER intends to engage an ENGINEER to provide professional engineering SERVICES; and

WHEREAS, the ENGINEER will provide said SERVICES for these PROJECT(S) in accordance with this AGREEMENT;;

NOW THEREFORE, in consideration of the promises contained in this AGREEMENT, OWNER and ENGINEER, on the date last executed below, agree as follows:

ARTICLE 1 - TERM OF AGREEMENT

The parties desire to enter into a multi-year AGREEMENT to secure certain benefits to the contract that would not otherwise be attainable if a multi-year AGREEMENT were not available. Accordingly, it is the expressed intent of the OWNER to renew the obligations of this contract on an annual basis during the term of this AGREEMENT, subject to an annual appropriation of funds by the OWNER to fund its obligations under this AGREEMENT and subject to Article 11 herein. However, it is also recognized that the OWNER can only contract for obligations that occur during a particular fiscal year. To the extent the OWNER'S obligations are not funded for any fiscal year during the term of this AGREEMENT, then the portion of the AGREEMENT covering the fiscal year where the OWNER'S obligations are unfunded shall be void and unenforceable as to both parties.

ARTICLE 2 – GENERAL CONDITIONS AND ENGINEER'S RESPONSIBILITIES

- 2.1 The parties mutually agree and acknowledge that this is an Oklahoma AGREEMENT and any dispute shall be resolved in accordance with the Laws of the State of Oklahoma and actions if necessary shall be brought in the District Court of Cleveland County. In the event of ambiguity in any of the terms of this AGREEMENT, it shall not be construed for or against any party on the basis that such party did or did not author the same.
- 2.2 The standard of care for all professional engineering and related SERVICES under this AGREEMENT will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER shall correct the SERVICES that fail to satisfy this standard of care. No warranty, expressed or implied is included in this AGREEMENT or in any drawing, specifications, report or opinion produced pursuant to this AGREEMENT.
- 2.3 A waiver by either OWNER or ENGINEER 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.
- 2.4 The City of Norman is an Equal Opportunity Employer.
- 2.5 The ENGINEER shall comply with all existing federal, state and local laws, rules and regulations including, but not limited to those pertaining to Collusion and Equal Employment Opportunity (EEO).
- 2.6 Liability, Indemnification and Insurance shall survive completion, suspension, or termination, for any reason, of this AGREEMENT.
- 2.7 Since ENGINEER has no control over contractor costs or over resources provided by others, ENGINEER does not guarantee that proposals, bids, or actual PROJECT costs or schedules will not vary from ENGINEER's opinion.

ARTICLE 3 - WORK ORDERS FOR SERVICES TO BE PERFORMED BY ENGINEER

Upon receipt of an acceptable proposal from the ENGINEER for scope, schedule and estimate of cost of SERVICES, the OWNER will issue a written project-specific work order for each Authority/City PROJECT. Time is of the essence. The City/NUA and the ENGINEER will determine a mutually agreeable schedule and fee, at rates not to exceed those attached hereto, for completion of SERVICES for each PROJECT. If requested by the ENGINEER and approved in writing by the

OWNER's representative, rates may be adjusted annually, in an amount not to exceed that reported for The Consumer Price Index for All Urban Consumers (CPI-U) for the South by the Bureau of Labor Statistics, U.S. Department of Labor.

ARTICLE 4 - OWNER'S RESPONSIBILITIES

- 4.1. OWNER-Furnished Data: OWNER will provide to ENGINEER all requested electronic data in OWNER's possession relating to ENGINEER's SERVICES on the PROJECT, which may be available from the OWNER's various departments relative to utilities as-builts, operations records, parcels, and any other such data necessary. ENGINEER may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by OWNER.
- 4.2. Access to Facilities and Property: OWNER will make its facilities accessible to ENGINEER as required for ENGINEER's performance of its SERVICES.
- 4.3. Timely Review: OWNER will examine ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; and transmit OWNER comments or other decisions to ENGINEER in a timely manner.
- 4.4. Advertisements, Permits, and Access: Unless otherwise agreed to in the Scope of Services, OWNER will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for ENGINEER's SERVICES or PROJECT construction.

ARTICLE 5 -- ASSIGNMENT

Inasmuch as this AGREEMENT is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the ENGINEER to provide professional and personal services to the OWNER, the parties agree that the ENGINEER may not assign its obligations, rights or interest in this AGREEMENT except as set forth elsewhere herein concerning Termination.

ARTICLE 6 - LIABILITY AND INDEMNIFICATION

- 6.1. General. Having considered the potential liabilities that may exist during the performance of the SERVICES and in consideration of the promises contained in this AGREEMENT, OWNER and ENGINEER agree to allocate and limit such liabilities in accordance with this Article.
- 6.2. Indemnification. ENGINEER and OWNER each agrees to defend, indemnify and hold harmless each other, **its** agents and employees, from and against legal liability for all claims, losses, damages and expenses to the extent such claims, losses, damages, or expenses are caused by its negligent acts, errors or omissions. In the event such claims, losses, damages or expenses are caused by the joint or concurrent negligence of ENGINEER and OWNER, such liability shall be borne by each party in proportion to its own negligence.
- 6.3. Employee Claims. ENGINEER shall indemnify OWNER against legal liability for damages arising out of claims by ENGINEER's employees. OWNER shall indemnify ENGINEER against legal liability for damages arising out of claims by OWNER's employees.
- 6.4. Consequential Damages. To the fullest extent permitted by law, neither party shall be liable for any special, indirect or consequential damages resulting from the SERVICES or this AGREEMENT.
- 6.5. Unanticipated Hazardous Materials. In the event hazardous material or waste is encountered by ENGINEER during the course of performing its SERVICES, and conditioned upon the fact that OWNER did not previously advise ENGINEER of the existence thereof, then and in that event:
 - a. OWNER and ENGINEER agree that the scope of services, schedule, and any cost estimates shall be adjusted and compensation to ENGINEER shall increase as is reasonably necessary. If the discovery of hazardous substances requires ENGINEER to take immediate measures to protect health and safety, ENGINEER agrees to notify OWNER within a reasonable time following such discovery. In addition to any required adjustments in the scope of SERVICES and cost estimate, OWNER agrees to reimburse ENGINEER for the reasonable costs of implementing measures to protect health and safety.

- b. OWNER shall indemnify, defend and hold ENGINEER, its officers, directors, agents, servants and employees, harmless from any claim, demand or action brought by any third party which is based upon injury or damage caused by said hazardous material or waste.

ARTICLE 7 - INSURANCE

During performance of the SERVICES under this AGREEMENT, ENGINEER shall maintain the following insurance:

- 7.1. Commercial General Liability (Combined Property Damage, Bodily Injury and Death): \$1,000,000 each occurrence; \$2,000,000 aggregate.
- 7.2. Automobile Liability (Combined Property Damage and Bodily Injury): \$1,000,000.
- 7.3. Workers Compensation: Statutory; plus Employers' Liability (each occurrence): \$500,000.
- 7.4. Professional Liability: \$2,000,000.

ENGINEER shall furnish OWNER certificates of insurance with provision that such insurance shall not be canceled, decreased nor fail to be renewed without at least thirty (30) days written notice to OWNER. All PROJECT contractors shall be required to include OWNER and ENGINEER as additional insured on their General Liability Insurance policies.

ENGINEER and OWNER shall each require its insurance carriers to waive all rights of subrogation against the other, and its directors, officers, partners, commissioners, officials, agents and employees for damages covered by any applicable General Liability insurance policies during and after the SERVICES. A similar provision shall be incorporated into all contractual arrangements entered into by OWNER and shall protect OWNER and ENGINEER to the same extent.

ARTICLE 8 - LIMITATIONS OF RESPONSIBILITY

ENGINEER shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures or safety precautions and programs in connection with the PROJECT, unless specifically provided in Appendix A, Scope of Services; (2) the failure of any contractor, subcontractor, vendor or other PROJECT participant, not under contract to ENGINEER, to fulfill contractual responsibilities to the OWNER or to comply with Federal, State or local laws, regulations, and codes; or (3) procuring permits, certificates and licenses required for any construction unless such responsibilities are specifically assigned to ENGINEER in a mutually agreeable Work Order.

ARTICLE 9 - REUSE OF DOCUMENTS

At OWNER's request, ENGINEER shall furnish OWNER with deliverables and/or other data on electronic media. All documents, including but not limited to, drawings, specifications and computer software prepared by ENGINEER pursuant to this AGREEMENT are Instruments of Service in respect to the PROJECT. ENGINEER retains ownership of and all rights thereto. Any further use or reuse by OWNER or others for extension, modification or expansion of this or any other PROJECT, unless under direction of the ENGINEER, or specifically assigned to ENGINEER in a mutually agreeable Work Order, shall be without liability to the ENGINEER or his sub-consultants and paragraph 6.2 by the OWNER shall be in full force and effect.

ARTICLE 10 - RECORDS AND ACCOUNTS

- 10.1. The ENGINEER will retain all pertinent records, documents and files (both electronic and paper) for a period of five (5) years beyond completion of each PROJECT or termination of the AGREEMENT for any reason. Said records shall include, but are not limited to, field notes, photographs and information, survey results and any other materials produced, created or accumulated in performing this AGREEMENT that have not been submitted to the OWNER subsequent to final completion of the PROJECT. OWNER may have access to such records during mutually agreeable normal business hours.
- 10.2. Such records shall also include its internal accounting records, and other supporting documents pertaining to the claims and/or invoices for costs of work and/or services of this AGREEMENT. The ENGINEER must maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The ENGINEER shall permit periodic audits by the OWNER and the OWNER's authorized representative. The periodic audits of the records in support of claims and invoices for the AGREEMENT shall be performed at times

and places mutually agreed upon by the OWNER and ENGINEER. Agreement as to the time and place for audits may not be unreasonably withheld.

ARTICLE 11 - TERMINATION

In the event of termination of this AGREEMENT by default, the parties hereto further agree that said termination shall not terminate or suspend any their rights, obligations or duties provided for in this AGREEMENT.

- 11.1. For convenience: OWNER may terminate or suspend this AGREEMENT, in whole or in part, for OWNER's convenience upon written notice to ENGINEER. OWNER shall pay ENGINEER for all the SERVICES performed to date, amount not to exceed the normal fee amount due for the SERVICES rendered, plus mutually agreeable termination or suspension expenses and as further limited by the not to exceed amounts set out in this AGREEMENT. Upon restart, if any, an equitable adjustment shall be made to ENGINEER's compensation.

Upon receipt of the notice of termination, the ENGINEER shall (1) immediately discontinue all work and services affected (unless the notice directs otherwise), and (2), upon payment for work performed, deliver to the OWNER 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 AGREEMENT, whether complete or incomplete unless the notice directs otherwise.

- 11.2. For cause: 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 through no fault of the party initiating the termination.. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the initiating party.

If this AGREEMENT is terminated by reason of a default of the ENGINEER prior to the completion of any PROJECT, the ENGINEER shall immediately assign to the OWNER any Agreements relative to this project entered into between the ENGINEER and its subcontractors and sub-consultants, as the OWNER may designate in writing and with the consent of the subcontractors and sub-consultants so designated. With respect to those Agreements assigned to and accepted by the OWNER, the OWNER 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 ENGINEER from and after the date of such assignment to and acceptance by the OWNER. All sums claimed by such the subcontractor or sub-consultants to be due and owing for services performed prior to such assignment and acceptance by the OWNER shall constitute a debt between the ENGINEER and the affected subcontractors or sub-consultants, and the OWNER shall in no way be deemed liable for such sums. The ENGINEER shall include this provision and the OWNER's rights and obligations hereunder in all agreements or contracts entered into with the ENGINEER's subcontractors and sub-consultants.

If this AGREEMENT is terminated by reason of default on the part of the ENGINEER, upon final determination by a court that the termination was improper, the termination will be deemed converted to a termination for convenience and the ENGINEER's remedy shall be limited to the recovery of compensation set out in paragraph "Termination for Convenience" of this AGREEMENT.

ARTICLE 12 - COMMUNICATIONS

Work order shall name Department for which SERVICES are being rendered with Project Manager, phone and email. Any communication required by this AGREEMENT shall be made in writing to the address specified below:

ENGINEER: Garver, LLC.
1016 24th Ave N.W.
Norman, OK 73069

OWNER: Norman Utilities Authority
201-C West Gray
Norman, OK 73070

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

ARTICLE 13 - SEVERABILITY

If any provision, clause, portion or section of this AGREEMENT is unenforceable, illegal or invalid for any reason, or if any event renders any portion or provision of this AGREEMENT void, such 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. 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 14 - ENTIRE AGREEMENT

This AGREEMENT, including its Exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of the OWNER and the ENGINEER concerning the AGREEMENT. Neither the OWNER nor the ENGINEER has made or shall be bound by any agreement or any representation to the other concerning this AGREEMENT which is not expressly set forth herein.

ARTICLE 15 - SUCCESSORS AND ASSIGNS

OWNER and ENGINEER each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party to this AGREEMENT and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this AGREEMENT.

IN WITNESS WHEREOF, OWNER and ENGINEER have executed this AGREEMENT.

DATED this 25th day of August, 2009.

Garver, LLC. (ENGINEER)

By: 
Title: Michael J. Graves
Project Manager

ATTEST:

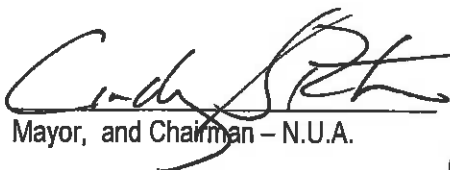

Shari Smith, P.E.
Project Engineer

CITY OF NORMAN/NORMAN UTILITIES AUTHORITY (OWNER)


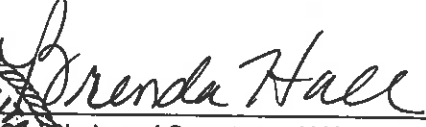
APPROVED as to form and legality this 18 day of August, 2009.


City Attorney

APPROVED & Executed by the City of Norman/Trustees of the Norman Utilities Authority this 25th day of August, 2009.

By: 
Title: Mayor, and Chairman - N.U.A.

ATTEST:



Brenda Hall
Clerk, and Secretary - N.U.A.

Hourly Rate Schedule for Garver, LLC**Hourly Rates For:****Amount (\$/hour):****Engineers**

E-1	\$ 85.00
E-2	\$ 105.00
E-3	\$ 125.00
E-4	\$ 145.00
E-5	\$ 175.00
E-6	\$ 225.00

Planners

P-1	\$ 105.00
P-2	\$ 125.00

Designers

D-1	\$ 87.00
D-2	\$ 125.00

Technicians

T-1	\$ 72.00
T-2	\$ 95.00

Surveyors

S-1	\$ 42.00
S-2	\$ 55.00
S-3	\$ 75.00
S-4	\$ 85.00
S-5	\$ 120.00
2-Man Crew (Survey)	\$ 151.00
3-Man Crew (Survey)	\$ 190.00
2-Man Crew (GPS Survey)	\$ 171.00
3-Man Crew (GPS Survey)	\$ 220.00

Construction Observation

C-1	\$ 85.00
C-2	\$ 102.00

Administration

A-1	\$ 50.00
A-2	\$ 65.00
A-3	\$ 95.00
I-1	\$ 105.00

Other

Automation/Controls Specialist	\$ 160.00
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