

AGREEMENT FOR ON-CALL SURVEYING SERVICES

This AGREEMENT between the City of Norman/Norman Utilities Authority (OWNER) and Lemke Land Surveying, Inc. (SURVEYOR)

WITNESSETH

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

WHEREAS, OWNER intends to engage the services of a SURVEYOR to provide professional surveying SERVICES; and

WHEREAS, the SURVEYOR 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 SURVEYOR, 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 SURVEYOR'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 SERVICES under this AGREEMENT will be the care and skill ordinarily used by members of SURVEYOR's profession practicing under similar circumstances at the same time and in the same locality. The SURVEYOR further agrees to be liable for any damages caused by its negligence and/or the negligent failure to timely discover and/or make such necessary corrections. The SURVEYOR is not relieved of liability for design errors, deficiencies or inadequacies undiscovered by the OWNER upon its review or inspection, nor is the SURVEYOR relieved from liability for the OWNER's lack of review or inspection of said documents.
- 2.3 A waiver by either OWNER or SURVEYOR 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 SURVEYOR 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.

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

Upon receipt of an acceptable proposal from the SURVEYOR for scope, schedule and cost estimate 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 SURVEYOR will determine a mutually agreeable schedule for completion of SERVICES for each PROJECT.

ARTICLE 4 - OWNER'S RESPONSIBILITIES

- 4.1. OWNER-Furnished Data: OWNER will provide to SURVEYOR all requested electronic data in OWNER's possession relating to SURVEYOR'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. SURVEYOR 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 as required for SURVEYOR's performance of its SERVICES.
- 4.3. Timely Review: OWNER will examine SURVEYOR's proposals, reports, drawings, specifications, and other documents; and transmit OWNER comments or other decisions to SURVEYOR in a timely manner.

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 SURVEYOR to provide professional and personal services to the OWNER, the parties agree that the SURVEYOR 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, the SURVEYOR's compensation for the SERVICES, the benefits of, and the promises contained in, this AGREEMENT, OWNER and SURVEYOR agree to allocate and limit such liabilities in accordance with this Article.
- 6.2. Indemnification. SURVEYOR 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 SURVEYOR and OWNER, such liability shall be borne by each party in proportion to its own negligence.
- 6.3. Employee Claims. SURVEYOR shall indemnify OWNER against legal liability for damages arising out of claims by SURVEYOR's employees. OWNER shall indemnify SURVEYOR 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 SURVEYOR during the course of performing its SERVICES, and conditioned upon the fact that OWNER did not previously advise SURVEYOR of the existence thereof, then and in that event:
 - a. OWNER and SURVEYOR agree that the scope of services, schedule, and any cost estimates shall be adjusted and compensation to SURVEYOR shall increase as is reasonably necessary. If the discovery of hazardous substances requires SURVEYOR to take immediate measures to protect health and safety, SURVEYOR 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 SURVEYOR for the reasonable costs of implementing measures to protect health and safety.

- b. OWNER shall indemnify, defend and hold SURVEYOR, 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, SURVEYOR 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.

SURVEYOR 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. SURVEYOR 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 SURVEYOR to the same extent.

ARTICLE 8 - LIMITATIONS OF RESPONSIBILITY

SURVEYOR shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures or safety precautions and programs in connection with any PROJECT, unless specifically provided in Article 9 - SERVICES; (2) the failure of any contractor, subcontractor, vendor or other PROJECT participant, not under contract to SURVEYOR, 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 SURVEYOR in a mutually agreeable Work Order.

ARTICLE 9 - SERVICES

The SURVEYOR is hereby employed by the OWNER to perform in accordance with good surveying practices and in the best interest of the City of Norman, all of the various professional SERVICES as follows:

- 9.1. Design Surveys. By using a combination of boundary and topographic surveys, prepare drawings showing:
 - A. The configuration of the surface of the property/site using elevation contours of the appropriate intervals on spot elevations.
 - B. The location of permanent natural and artificial objects using standard mapping designations.
 - C. The existence, location and elevation of utilities, including the size and type of material.
 - D. If required, prepare design-ready CADD files of surveys.

Prepare control surveys, which provide horizontal and/or vertical position data for the support or control of subordinate surveys and/or mapping.

- 9.2. Property Surveys. Determine the boundaries of property by the research of public and private records combined with site investigation.

Establish or re-establish boundary locations on the ground and prepare maps showing those locations.

Prepare legal descriptions and drawings to be used in the acquisition of property and for the acquisition of easements and rights-of-way.

Identify easements, encroachments and other matters adversely affecting title to property.

All surveys are to be performed to the minimum standards for the practice of land surveying as established by the State Board of Registration for Professional Engineers and Land Surveyors.

Recording of corners as required by the Corner Perpetuation and Filing Act must be completed for each survey as necessary.

- 9.3. Construction Staking and/or As-built Surveys. Conduct surveys to determine the adequacy of completion.

Conduct surveys to obtain essential dimensions for computing construction pay quantities.

Conduct surveys upon completion of construction to determine final horizontal and vertical location.

- 9.4. Response Time. If an emergency exists, making it necessary to have the SURVEYOR on the job site immediately, the SURVEYOR shall respond as soon as possible, but not later than four (4) hours, otherwise the SURVEYOR shall respond within seventy-two (72) hours.

- 9.5. Surveying Procedures. The OWNER shall have the option of requesting that the SURVEYOR use standard and/or specialized surveying procedures.

ARTICLE 10 - COMPENSATION

The OWNER agrees to pay the SURVEYOR as compensation for professional surveying services listed above at the following rates:

- 10.1. Basic Services. The SURVEYOR shall be paid on the basis of \$95.00 per hour for the use of a standard two-man survey crew to include transportation of equipment and materials, overhead and profit, and all reports to be made.

- 10.2. Additional Survey Services. Any additional services requested in writing by the OWNER shall be performed by the SURVEYOR at the following hourly rates:

Principal Land Surveyor	\$105.00
Professional Land Surveyor	\$95.00
Professional Engineer	\$95.00
GIS Consultant	\$90.00
Field Technician – Standard	\$50.00
Field Technician – HAZWOPER Trained Level C	\$55.00
Field Technician – HAZWOPER Trained Level D	\$50.00
GPS/RTK Robotic Equipment	\$45.00
CADD Technician	\$60.00
Data Reduction/Office Calculations	\$75.00
Clerical	\$35.00
ATV (4-Wheel)	\$40.00/half day

The SURVEYOR may submit invoices, accompanied by detailed description of the total work accomplished to the OWNER, not more than once per month.

ARTICLE 11 – DOCUMENTS, RECORDS AND ACCOUNTS

- 11.1. All documents, as-built and other drawings, field notes, photographs and information, specifications, reports, survey results, computer files and any other materials or information produced, created or accumulated in performing this AGREEMENT, are and shall remain the property of the OWNER and may be reproduced, distributed and published in whole or in part without permission or any additional payments or fees to SURVEYOR. Reuse of said documents by the OWNER shall be at the OWNER's risk and responsibility and not that of SURVEYOR. The parties may use any portions of said documents at their own risk and responsibility. The SURVEYOR shall do weekly backups of computer files and maintain said backups in a safe and secure location.
- 11.2. At OWNER's request, SURVEYOR shall furnish OWNER with deliverables and/or other data on electronic media. The SURVEYOR 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 that stated above, but are not limited thereto, and 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.
- 11.3. 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 SURVEYOR must maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The SURVEYOR 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 SURVEYOR. Agreement as to the time and place for audits may not be unreasonably withheld.

ARTICLE 12 - 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.

- 12.1. For convenience: OWNER may terminate or suspend this AGREEMENT, in whole or in part, for OWNER's convenience upon written notice to SURVEYOR. OWNER shall pay SURVEYOR 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 SURVEYOR's compensation.

Upon receipt of the notice of termination, the SURVEYOR 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.

- 12.2. 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 SURVEYOR prior to the completion of any PROJECT, the SURVEYOR shall immediately assign to the OWNER any Agreements relative to this project entered into between the SURVEYOR 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 SURVEYOR 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 SURVEYOR and the affected subcontractors or sub-consultants, and the OWNER shall in no way be deemed liable for such sums. The SURVEYOR shall include this provision and the OWNER's rights and obligations hereunder in all agreements or contracts entered into with the SURVEYOR's subcontractors and sub-consultants.

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

ARTICLE 13 - 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:

SURVEYOR: Lemke Land Surveying, Inc..
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 SURVEYOR and OWNER.

ARTICLE 14 - 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 15 – 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 SURVEYOR concerning the AGREEMENT. Neither the OWNER nor the SURVEYOR 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.

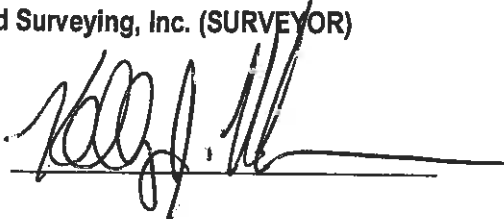
ARTICLE 16 - SUCCESSORS AND ASSIGNS

OWNER and SURVEYOR 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 SURVEYOR have executed this AGREEMENT.

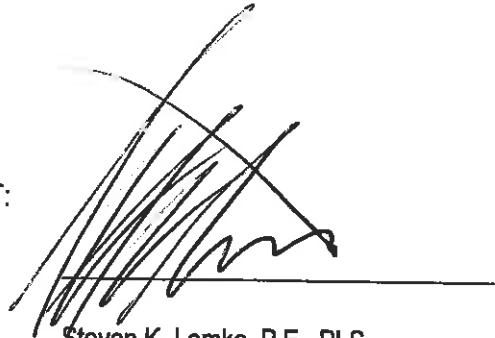
DATED this 25th day of August, 2009.

Lemke Land Surveying, Inc. (SURVEYOR)



By: Kelly Henderson, PLS, CFedS
Title: Principal

ATTEST:



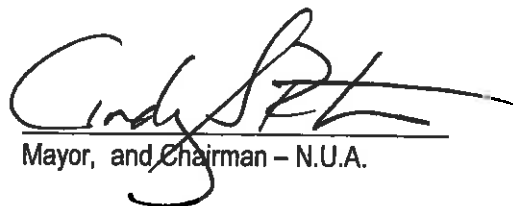
Steven K. Lemke, P.E., PLS
Principal

CITY OF NORMAN/NORMAN UTILITIES AUTHORITY (OWNER)

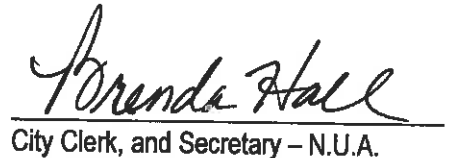
APPROVED as to form and legality this 18 day of August, 2009.


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:


City Clerk, and Secretary - N.U.A.