

AGREEMENT FOR PROFESSIONAL SERVICES

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

1. OWNER intends to develop a Compliance Plan and Monitoring Plan for the Lake Thunderbird TMDL (the Project); and,
2. OWNER requires certain professional survey, design, analysis 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 __th day of _____, 200__.

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. The CONSULTANT and the OWNER each hereby agree to indemnify, and hold harmless the other party, its officers, servants, and employees, from and against liability, loss, damage, cost, and expense (including attorneys' fees and accountants' fees) caused by an error, omission, or negligent act of the indemnifying party in the performance of services under this Agreement. The CONSULTANT and the OWNER each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of any such claims. In any and all claims asserted by any employee of the CONSULTANT against any indemnified party, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT or any of the CONSULTANT'S employees under workers' compensation acts, disability benefit acts, or other employee benefit acts. The acceptance by OWNER or its representatives of any certification of insurance providing for coverage other than as required in this Agreement to be furnished by the CONSULTANT shall in no event be deemed a waiver of any of the provisions of this indemnity provision. None of the foregoing provisions shall deprive the OWNER of any action, right, or remedy otherwise available to the OWNER at common law.

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:

Joe Willingham, P.E.
Storm Water Engineer
City of Norman
P.O. Box 370
Norman, OK 73070

CONSULTANT:

Olsson Associates
Reza Khakpour, P.E., CFM
Civil/Water Resources Engineer
201 Northwest 63rd Street, Suite 130
Oklahoma City, Oklahoma 73116

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 Olsson Associates have executed this Agreement.

DATED this ___th day of _____, 200__.

The City of Norman
(OWNER)

Olsson Associates
(CONSULTANT)

Signature _____

Signature Alan A. Soliani

Name Cindy Rosenthal

Name ALAN A. Soliani

Title Mayor

Title V/P

Date _____

Date 8/8/14

Attest:

Attest:

City Clerk

Jeffrey S. Jenkins
Secretary

Approved as to form and legality this ____ day of _____ 2014 .

City Attorney

Attachment A**SCOPE OF SERVICES / SCOPE OF WORK
PREPARATION OF COMPLIANCE PLAN AND MONITORING PLAN
FOR THE LAKE THUNDERBIRD TOTAL MAXIMUM DAILY LOAD (TMDL)
FOR THE CITY OF NORMAN****The City of Norman Public Works Department****RFP # 1415-01**

The anticipated services will include the review of existing data, evaluation and assessment of sources of pollution in the contributing watershed, compliance plan development, monitoring plan development, review of the existing cost recovery plan and provide suggestions to enhance the cost recovery plan. The work will culminate in the submittal of the Compliance Plan and the Monitoring Plan in report format.

This Scope of Services outlines the tasks necessary to complete the steps required to develop a compliance plan to achieve the pollutant loading set forth in a TMDL issued in November 10, 2013 by the Oklahoma Department of Environmental Quality (ODEQ). The final report will include a monitoring plan that is developed to monitor the discharge from each structural Best Management Practice (BMP) to measure the BMP effectiveness and ensure the overall compliance with release criteria set by ODEQ.

The consultant will prepare report documents acceptable to the City of Norman for the improvements as outlined in the phases of work and sub-tasks described. The consultant will prepare complete detailed compliance and monitoring plans and perform a feasibility study to make sure that the selected structural Best Management Practices (BMP) are feasible for design and construction and the selected non-structural BMP solutions are implementable. Feasibility for the proposed monitoring plan will be performed to ensure that the monitoring locations are safe and accessible and the monitoring plan will meet the objectives of the issued TMDL for Lake Thunderbird. The detailed design and the development of construction plan for each selected structural BMP is not included in this scope of work.

The work required to accomplish this scope of work is outlined by task below. The tasks and schedule will be developed as required to move the proposed project forward to meet the City of Norman deadline set per the issued TMDL.

This Scope of Services / Scope of Work identify six tasks:

TASK 1: Data Review and Analysis**TASK 2: Evaluation/Assessment of Contributing Watershed****TASK 3: Compliance Plan Development****TASK 4: Monitoring Plan Development****TASK 5: Agency Coordination and Public Involvement****TASK 6: Cost Recovery Method Assessment and Recommendations**

TASK 1 – Data Review and Analysis

The consultant shall obtain copies of available studies and analyses to review previous findings and modeling results. This effort will include, but will not be limited to, the City of Norman Stormwater Master Plan, the City of Norman Greenway Master Plan, the TMDL documents issued by Oklahoma Department of Environmental Quality (ODEQ) and the modeling result of HSPF model developed as an analysis to support the issued TMDL. This task will include the identification of all pollutant sources used in the development of the existing HSPF model and assess their role on the overall watershed pollutant loads.

This effort will include the review of available aerial photography, soils maps, elevation data and other available data to prepare for the evaluation and assessment effort detailed in Task 2. Additionally, this effort will include the review of all existing non-structural BMPs that may be in place, as well as the review of all ordinances and regulations governing the contributing watershed. Enhancement of the rules and regulations governing the contributing watershed and practices used as BMPs can become a part of the Compliance Plan as non-structural BMPs.

TASK 2 – Evaluation/Assessment of Contributing Watershed

The consultant will perform a limited assessment of the watershed to confirm the physical locations of pollutant sources identified in Task 1 effort. This effort shall include the verification of the pollutant sources identified in data analysis phase and assessment of their receiving waters immediately downstream of the discharge point (up to 100 feet downstream of each location as necessary). The assessment teams will include minimum of two (2) persons per team for safety and physical demand of data gathering for sediment transport and stability analysis. Identified pollutant sources will be rated for severity and the proposed plan will indicate the order for the implementation of each proposed BMP.

TASK 3 – Compliance Plan Development

Using the information gathered from the Task 2 effort a Compliance Plan will be developed to reduce the pollutant loading of Lake Thunderbird to the required levels set by the issued TMDL. The compliance plan will include a series BMPs with a suggested order of implementation. A feasibility study will be conducted to identify possible issues with the implementation of each suggested BMP.

Ten (10) copies of the compliance plan will be submitted in a report format to the City of Norman staff for their review and comment. After City of Norman staff review of the compliance plan and with their approval copies of the Compliance Plan will be distributed to other Stake Holders (The City of Oklahoma City, The City of Moore, ODEQ, OWRB, COMCD, etc.) for their review and comment. Approval of the compliance plan is required by the City of Norman staff only.

After addressing all City of Norman staff comments, five (5) copies of the Final Compliance Plan in a report format will be submitted to the City of Norman for their use.

TASK 4 – Monitoring Plan Development

A Monitoring Plan to compliment the Compliance Plan will be developed to gage the level of performance of the proposed BMPs. The Monitoring Plan will incorporate existing sampling locations with new sampling sites to measure the pollutant loads contributed to the lake from each municipality and measure the effectiveness of the implemented BMPs. A feasibility study will be conducted to identify possible issues with the implementation of each monitoring site.

A Quality Assurance Project Plan (QAPP) will be developed to standardize the method of sampling and monitoring from each site. Since the monitoring may be conducted by different agencies, a QAPP will setup standards for sampling and analysis used at each monitoring site.

TASK 5 – Agency Coordination and Public Involvement

The scope of work will include five (5) meetings for agency coordination. These meetings will include meetings with stakeholders to coordinate efforts and to gather their concerns and input for the development of the Compliance and Monitoring Plans. The stakeholders shall include but are not limited to the City of Norman, the City of Oklahoma City, the City of Moore, Oklahoma Water Resources Board (OWRB), Oklahoma Department of Environmental Quality (ODEQ), and Central Oklahoma Master Conservancy District (COMCD). These meetings will include any necessary communications with agency staffs to present the preliminary and final plans and discuss comments.

The scope of work will include five (5) Public Meetings/Presentations to present and discuss the Compliance and Monitoring Plans. The scope does not include public notification and public outreach. Meetings and presentations such as City Council Meetings and agency board meetings will be a part of this task.

TASK 6 – Cost Recovery Method Assessment and Recommendations

The consultant will review the existing Methods of Cost Recovery and compare the incoming cash flow with the estimated cost of the implementation of the Compliance and Monitoring Plans. If additional revenues are required to maintain a sustainable stormwater utility, additional cost recovery methods will be studied and recommendations will be provided.

Deliverables

Deliverables will include two report documents (one for each proposed plan). The Compliance Plan Report will show the location of pollutant source identified and the type of Best Management Practices (BMP) proposed to address the contribution from the pollutant source. The Compliance Plan Report will not include detailed design for any of the proposed structural BMPs.

The Monitoring Plan Report will identify the strategic locations for monitoring sites to evaluate the effectiveness of the installed BMPs and to make sure that the reduced level of pollutants entering Lake Thunderbird meets the required levels stated in the published Total Maximum Daily Load (TMDL) document.

Attachment B

Schedule

It is the intent of this Contract that the consultant shall complete the plans in accordance with the following schedule items:

NTP	August 2014
Complete Data Review	October 2014
Complete Watershed Evaluation and Assessment	January 2015
Complete Compliance Plan Development	February 2015
Complete Monitoring Plan Development	March 2015
Submit Preliminary Report.....	April 2015
Public Involvement	May 2015
Final Report Submittal	October 2015

Attachment C

Compensation

Compensation including all time and cost of material shall be paid per hourly rates included in contract with \$436,022.00 set as the not to exceed amount. Invoicing and payments shall be on monthly basis.

The hourly rates shall be as indicated in the below table for fiscal year 2014 and may change per audited rates for fiscal year 2015.

Rate Table

Sr. Project Engineer	\$211.45
Sr. Engineer/Scientist	\$167.75
Engineer/Scientist	\$134.82
Sr. Designer	\$148.84
Technician	\$106.11
Clerical	\$88.59

Attachment D

Owner's Responsibility

The Owner will provide the city of Norman SWMP, the WQPZ Ordinance, the City of Norman Fertilizer Ordinance, the TMDL, The Wichita/Sedgwick County Stormwater Manual (adopted by Norman) and the video documentation of streams done during the development of the SWMP.

The Owner will obtain all rights of entry needed for all field work including but not limited to any survey or field investigation and monitoring sites.