

AGREEMENT
FOR
ENGINEERING SERVICES

This AGREEMENT, between the Norman Utilities Authority (OWNER) and COWAN GROUP ENGINEERING ,LLC, (ENGINEER);

WITNESSETH

WHEREAS, OWNER intends to evaluate the existing groundwater rights held by the OWNER and determine the appropriate amount of groundwater rights needed for the year 2060, in conjunction with other water resources. The OWNER also intends to acquire additional groundwater rights, as proposed in the Final Technical Memorandum. This PROJECT will be identified as 2016 Groundwater Rights Evaluation and shall be as described in Attachment B.

WHEREAS, OWNER requires engineering services in connection with the PROJECT (the SERVICES); and,

WHEREAS, ENGINEER is prepared to provide said SERVICES; and.

NOW THEREFORE, in consideration of the promises contained in this AGREEMENT, OWNER and ENGINEER agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this AGREEMENT shall be _____.

ARTICLE 2 - COMPLETION DATE

ENGINEER shall complete the SERVICES in accordance with Attachment A, Schedule.

ARTICLE 3 - GOVERNING LAW

The laws of the state of Oklahoma shall govern this AGREEMENT.

ARTICLE 4 - SERVICES TO BE PERFORMED BY ENGINEER

ENGINEER shall perform the SERVICES described in Attachment B, Scope of Services.

ARTICLE 5 - COMPENSATION

OWNER shall pay ENGINEER in accordance with Attachment C, Compensation.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

- 6.1. OWNER-Furnished Data: Upon request, OWNER will provide to ENGINEER all data in OWNER's possession relating to ENGINEER's SERVICES on the PROJECT. Such data may include electronic data available from the OWNER's Geographic Information System (GIS) and data generated by OWNER's water distribution system model. ENGINEER will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by OWNER. OWNER's data is provided for temporary use or copying by ENGINEER.
- 6.2. Access to Facilities and Property: OWNER will make its facilities accessible to ENGINEER as required for ENGINEER's performance of its SERVICES
- 6.3. 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.
- 6.4. Meetings: OWNER will participate in monthly progress meetings or other meetings with ENGINEER or contractor(s) defined in Scope of Services.
- 6.5. 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.

- 6.6. Hazardous Substances: If hazardous substances in any form are encountered or suspected, ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation. ENGINEER will, if requested by OWNER, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend necessary remedial measures at an additional fee with contract terms to be negotiated.

ARTICLE 7 - STANDARD OF CARE

ENGINEER shall exercise the same degree of care skill and diligence in the performance of the SERVICES as is ordinarily possessed and exercised by a professional engineer under similar circumstances. ENGINEER shall correct the SERVICES that fail to satisfy this standard of care. No warranty, express or implied is included in this AGREEMENT or in any drawing, specifications, report or opinion produced pursuant to this AGREEMENT.

ARTICLE 8 - LIABILITY AND INDEMNIFICATION

- 8.1 General. Having considered the potential liabilities that may exist during the performance of the SERVICES, the benefits of the PROJECT, the ENGINEER's fee for 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.
- 8.2 Indemnification and Liability. The ENGINEER agrees to defend, indemnify, and hold harmless the OWNER, its officers, servants, and employees, from and against legal liability for all claims, losses, damage, cost, and expense (including reasonable attorneys' fees and accountants' fees) caused by a negligent act, error, or omission of the ENGINEER in the performance of services under this Agreement. OWNER agrees to defend, indemnify, and hold harmless the ENGINEER, its officers, servants, and employees, from and against legal liability for all claims, losses, damage, cost, and expense (including reasonable attorneys' fees and accountants' fees) caused by a negligent act, error, or omission of the OWNER in the performance of services under this Agreement, provided such indemnification shall be applicable only to the extent sovereign immunity has been waived pursuant to Oklahoma law. The ENGINEER and the OWNER each agree to promptly service notice on the other party of any claims arising hereunder, and shall cooperate in the defense of such claims. 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 ENGINEER 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 OWNER at common law.
- 8.3 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.
- 8.4 Consequential Damages. To the fullest extent permitted by law, ENGINEER shall not be liable to OWNER for any special, indirect or consequential damages resulting in any way from the performance of the SERVICES.
- 8.5 Survival. Upon completion of all SERVICES obligations and duties provided for in this AGREEMENT or if this AGREEMENT is terminated for any reason the terms and conditions of this Article shall survive.

ARTICLE 9 - INSURANCE

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

- 9.1 Worker's compensation insurance for ENGINEER's employees as required by Oklahoma Workers Compensation Statutes.
- 9.2 Comprehensive general liability insurance with a minimum of \$125,000 per accident for bodily injury or death and \$25,000 per occurrence for property damage.
- 9.3 Comprehensive automobile liability insurance with a minimum of \$125,000 per accident for bodily injury or death and \$25,000 for property damage.
- 9.4 Professional Liability (errors and omissions) insurance with a minimum policy value of \$1,000,000.

ENGINEER shall furnish OWNER certificates of insurance that shall include a provision that such insurance shall not be canceled without at least thirty 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 each shall 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 property insurance 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 10 - 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; (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 Attachment B, Scope of Services.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Since ENGINEER 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, ENGINEER's opinion of probable costs and of PROJECT schedules shall be made on the basis of experience and qualifications as a professional engineer. ENGINEER does not guarantee that proposals, bids, or actual PROJECT costs will not vary from ENGINEER's cost estimates.

ARTICLE 12 - REUSE OF DOCUMENTS

Upon 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. Said documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the PROJECT or on any other PROJECT.

ARTICLE 13 - TERMINATION

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. 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 other party.

OWNER may terminate or suspend performance of this AGREEMENT for OWNER's convenience upon written notice to ENGINEER. ENGINEER shall terminate or suspend performance of the SERVICES on a schedule acceptable to OWNER. If termination or suspension is for OWNER's convenience, OWNER shall pay ENGINEER for

all the SERVICES performed to date, amount not to exceed the normal fee amount due for the SERVICES rendered and termination or suspension expenses. Upon restart, an equitable adjustment shall be made to ENGINEER's compensation.

ARTICLE 14 - DELAY IN PERFORMANCE

Neither OWNER nor ENGINEER shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this AGREEMENT, such circumstances include, but are not limited to abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riot and other civil disturbances; strikes, work slowdowns and other labor disturbances; sabotage; judicial restraint; and 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 ENGINEER under this AGREEMENT.

Should such circumstances occur the non-performing party shall, within a reasonable period after 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 15 - COMMUNICATIONS

Any communication required by this AGREEMENT shall be made in writing to the address specified below:

ENGINEER: Jeff Cowan, P.E.
Cowan Group Engineering, LLC
7100 N. Classen, Suite 500
Oklahoma City, OK 73116
405-463-3369
jeff@cowangroup.co

OWNER: Chris Mattingly, P.E.
Norman Utilities Authority
201-C West Gray
P.O. Box 370
Norman OK 73070
405-292-9747
Chris.Mattingly@normanok.gov

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

ARTICLE 16 - WAIVER

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.

ARTICLE 17 - 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 this AGREEMENT 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 18 - INTEGRATION

This AGREEMENT represents the entire and integrated AGREEMENT between OWNER and ENGINEER. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT. This AGREEMENT, including its attachments and schedules, may only be changed by a written amendment executed by both parties. The following attachments and schedules are hereby made a part of this AGREEMENT:

Attachment A - Schedule
Attachment B - Scope of Services
Attachment C - Compensation

ARTICLE 19 - SUCCESSORS AND ASSIGNS

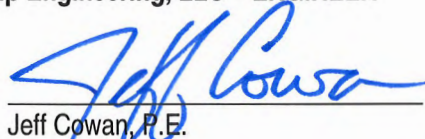
OWNER and ENGINEER each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party to this AGREEMENT and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives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

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

DATED this 2 day of FEB., 2016.

Cowan Group Engineering, LLC – ENGINEER

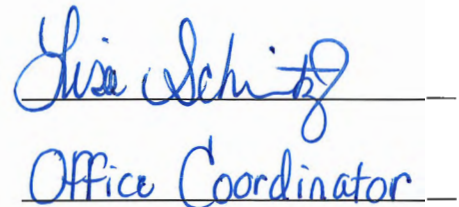
By:


Jeff Cowan, P.E.

Title:

CEO

ATTEST


Office Coordinator

Norman Utilities Authority- OWNER

APPROVED as to form and legality this _____ day of _____, 20____.

City Attorney

APPROVED by the Trustees of the Norman Utilities Authority this _____ day of _____, 20____.

ATTEST

By:

Title:

ATTACHMENT A

SCHEDULE

The 2016 Groundwater Rights Evaluation Technical Memorandum (TM) shall be completed in accordance with the following schedule.

- Draft TM shall be delivered to OWNER within 90 calendar days from Notice to Proceed.
- Final TM shall be delivered to OWNER within 45 calendar days following receipt of OWNER comments on the Draft TM.
- Groundwater Rights Applications shall be completed and delivered to OWRB and OWNER within 60 calendar days following OWNER's acceptance of Final TM.

ATTACHMENT B

SCOPE OF SERVICES

2016 GROUNDWATER RIGHTS EVALUATION

1.0 BACKGROUND

The PROJECT will provide the OWNER with a comprehensive review regarding the existing groundwater rights and recommendations for the acquisition of additional groundwater rights to serve the OWNER until the year 2060, in conjunction with all other water resources. In General, the PROJECT will consist of the compilation and assessment of all existing ground water rights, evaluation of additional groundwater rights necessary for the future, and determination of most effective methods for acquisition of the additional rights, in accordance with the Oklahoma Water Resources Board (OWRB) regulations.

The PROJECT will consist of an engineering evaluation, technical memorandum and OWRB permit applications for groundwater rights. Major activities include:

- Development of the OWNER's criteria and preferences for the project.
- Review of the OWNER's existing groundwater rights.
- Review of the OWNER's current and proposed water usage, including the Norman's 2060 Strategic Water Supply Plan prepared by Carollo/Tetra Tech Engineers.
- Review existing water rights for platted parcels.
- Prepare preliminary groundwater technical memorandum discussing evaluation criteria and recommendations for acquisition of new water rights.
- Prepare final technical memorandum, based upon review and comments by OWNER
- Prepare OWRB groundwater rights applications and respond to agency comments
- Prepare template notification to landowners
- Prepare for and participate in public participation meetings

ENGINEER will provide services related to the groundwater rights evaluation and permitting activities described above. These services are further detailed as General Services below.

2.0 GENERAL SERVICES

Basic Services provided by the ENGINEER will generally be covered under three main activities: Activity A – Project Coordination, Activity B –Engineering Evaluation and Technical Memorandum, C – Groundwater Rights Permitting, and Activity D – Engineering Allowances. Specific tasks for each activity are identified in the following sections.

ACTIVITY A - PROJECT COORDINATION

Task A-1 – Project Management

Provide project management for Activities A through C. Project management will include, but not be limited to developing and implementing a project management plan; tracking and managing internal schedules of work; monitoring and addressing issues related to the scope of services, budget and deliverables; preparing and processing monthly billings; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to the OWNER on a monthly basis.

- a. ENGINEER will coordinate efforts on project tasks identified below.
- b. ENGINEER shall prepare a monthly invoice for OWNER approval.

Task A-2 – Design Coordination Kickoff and Progress Meetings

- a. ENGINEER will prepare for and participate in a PROJECT kick-off meeting for the groundwater rights evaluation and acquisition project. At the kick-off meeting ENGINEER will confirm with the OWNER the scope of services, deliverables, schedule and administrative protocols.
 - 1. ENGINEER will present an overview of the proposed draft criteria to be used in evaluating and acquisition of groundwater rights at the kickoff meeting.
 - 2. ENGINEER will prepare a meeting memorandum documenting the decisions from the meeting.
- b. Project Coordination Meetings - ENGINEER will coordinate, prepare for, and conduct coordination meetings to review progress with the OWNER. Meetings will take place at the OWNER's office in Norman. ENGINEER will prepare an agenda for the meetings, moderate the meetings and prepare/distribute meeting notes. Up to two (2) coordination meetings will be held; the project coordination meetings are in addition to the kickoff meeting.

ACTIVITY B – ENGINEERING EVALUATION AND TECHNICAL MEMORANDUM

Task B-1 – Draft Technical Memorandum Preparation

- a. ENGINEER will obtain and review all existing water rights permits, and applications (if available) from OWNER or Oklahoma Water Resources Board (OWRB). As a result of this research effort, ENGINEER will map the accurate spatial extent of all existing water rights per specifications in Task B-2.b, and provide OWNER with updated GIS data layers detailing those areas as well as any proposed water rights acquisition areas.
- b. Review the 2060 Strategic Water Plan to evaluate quantity of groundwater rights needed, in conjunction with other water resources.
- c. Investigate potential groundwater rights allocations for Garber-Wellington Aquifer and prepare alternatives for consideration by OWNER.
- d. Research groundwater permitting regulations with respect to incorporation of platted areas by municipalities, as well as areas developed under a "certificate of survey." Additionally, obtain information regarding any properties owned by OWNER, which is not included in existing water rights permits.
- e. Using publically available data and interviews with OWNER staff, identify the impacted parcels and provide the parcel ownership and contact information in the areas of consideration for additional groundwater rights.

- f. ENGINEER will prepare a draft technical memorandum documenting the evaluation of the existing groundwater rights, recommendations for quantity of additional rights to be secured by the OWNER, and discuss alternatives for obtaining the additional rights and permitting. Technical memorandum will include consideration of existing water rights allocations, as well as potential future decrease(s) in allocation. Prepare three (3) bound hard copies and one (1) pdf electronic copy of the draft technical memorandum. Present the draft of the technical memorandum to the OWNER.

Task B-2 – Final Technical Memorandum Preparation

- a. After receiving input and comments from the OWNER and other impacted parties, ENGINEER shall update and finalize the technical memorandum. ENGINEER shall deliver three (3) bound hard copies and one (1) pdf electronic copy of the final technical memorandum to the OWNER.
- b. Upon acceptance of Final TM, ENGINEER will prepare GIS map of additional lands to be added to groundwater rights permits and submit to OWNER electronically. Final project deliverables shall include all digital data files used to create the final report, as well as any spatial data created as a result of this effort. All maps shall be produced with the latest version of ArcGIS (currently 10.2). All geographic layers used to produce maps or figures in the final report will be transmitted to the OWNER in either ArcGIS shapefile or geodatabase format along with any associated data tables. All spatial data will be free of slivers or overlapping polygons, and must maintain topological integrity.

ACTIVITY C – GROUNDWATER RIGHTS PERMITTING

Task C-1 – OWRB Groundwater Rights Permitting

- a. ENGINEER will prepare for and attend one (1) coordination meeting with Oklahoma Water Resources Board (OWRB) to discuss existing and additional water rights. ENGINEER will prepare and distribute meeting notes.
- b. ENGINEER will prepare up to two (2) OWRB Groundwater Rights Applications (New or Amended) for additional groundwater rights up to the amount decided upon in the Technical Memorandum with all associated exhibits and attachments.

Task C-2 – Public Participation

- a) ENGINEER will prepare a template notification letter and electronic list of landowners within the area defined by the OWRB permit application. The landowner list shall be prepared in a manner that can be merged with the notification letter.
- b) ENGINEER will prepare for and attend one (1) follow-up meeting with Oklahoma Water Resources Board (OWRB) to answer and respond to questions regarding previous submittals. ENGINEER will prepare and distribute meeting notes.

ACTIVITY D-1 – ENGINEERING ALLOWANCES

- 1. Travel and Direct Expenses to all meetings with OWNER, OWRB and public participation.
- 2. Preparation of presentation materials including but not limited to maps, presentation boards, handouts or other items necessary to disseminate information to the public at public participation meetings.

- a) ENGINEER will prepare for and attend up to two (2) public information meetings with OWNER to explain groundwater rights permitting process and impacts on landowners and existing well owners. ENGINEER will prepare and distribute meeting notes.
 - b) ENGINEER will respond to comments from public participation notices and meetings, in cooperation with OWRB.
- 3. Preparation of landowner notification letters to include labor, printing and mailing costs. Lump Sum amount shown in Attachment C is the estimated cost of one thousand (1000) notices at \$15.00 per notice.
 - 4. Purchase Cleveland County Assessor ARCGIS Database to determine list of affected homeowners receiving public notice.

ADDITIONAL SERVICES

Additional Services are those services not included in General Services that may be required for the PROJECT. Additional Services include, but are not necessarily limited to the following:

- a. Services not included in ATTACHMENT B or Special Services that are approved by the OWNER.
- b. Preparing applications and supporting documents for grants, loans, or planning advances for providing data for detailed applications.
- c. Providing additional copies of reports, permit applications, public notices or landowner notification letters beyond those specifically described in ATTACHMENT B.
- d. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties arising from the development of the PROJECT, including the preparation of engineering evaluation and reports for assistance to the OWNER.
- e. Payment of fees for permit applications and publication(s) of notices.
- f. Public relation activities and consulting services.

ATTACHMENT C

COMPENSATION

The OWNER will compensate ENGINEER on a lump sum basis for the SERVICES rendered. The lump sum fee is broken down below by task as defined in the Scope of Services:

Activity	Task Description	Lump Sum Amount
A-1	Project Management	\$5,740
A-2	Kickoff and Progress Meetings	\$2,980
B-1	Draft TM Preparation	\$13,452
B-2	Final TM Preparation	\$6,492
C-1	OWRB Groundwater Rights Permitting	\$16,314
C-2	Public Participation	\$1,256
D.1	Engineering Allowances - Travel and Direct Expenses	\$800
D.2a	Presentation Materials (including but not limited to maps, presentation boards, and handouts)	\$1,000
D.2b&c	Public Participation and Public Comment Response Summary	\$16,000
D.3	Printing and Mailing of Public Notices (Not to Exceed 1000)	\$15,000
D.4	Cleveland County Assessors ARCGIS Database	\$250
Total		\$79,284

The ENGINEER may submit interim invoices, not to exceed one per month, for partial payment for SERVICES rendered. The invoices to OWNER will be by activity for the percentage of work actually completed. The OWNER shall make interim payments within 30 calendar days in response to ENGINEER's interim invoices.

No budgetary allowance has been established for Additional Services. Additional services must be authorized by amendment of the AGREEMENT. Time and materials invoicing for ENGINEER'S additional services will be at the hourly rates provided below. ENGINEER's direct expenses will include a multiplier of 1.10.