

AGREEMENT
FOR
ENGINEERING SERVICES

This AGREEMENT, between the Norman Utilities Authority (OWNER) and Professional Engineering Consultants, P.A., (ENGINEER);

WITNESSETH

WHEREAS, OWNER intends to design and construct a new 1.0 MG elevated water storage tank (EST) in the high pressure plane. The proposed tower shall be located adjacent to the water treatment plant, east of the intersection of E. Robinson St. and 24th Ave. NE. Additional improvements shall consist of a water supply line to the tower, backwash line tie-in at the water treatment plant, and access road improvements. This PROJECT will be identified as the High Pressure Plane Elevated Storage Tank.

WHEREAS, OWNER requires engineering services for the development of construction plans and specifications in connection with the PROJECT (the SERVICES); and,

WHEREAS, ENGINEER is prepared to provide said SERVICES;

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, Project 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). ENGINEER will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by OWNER. ENGINEER may make permanent copies for his files of maps or reports or other hard copy information provided by the OWNER, but must return the originals to the OWNER within a reasonable time period.
- 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. ENGINEER and OWNER each agrees to defend, indemnify and hold harmless each other, it's 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 it's own negligence.
- 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 \$100,000 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 \$100,000 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: Ethan J.L. Edwards, P.E.
Professional Engineering Consultants, P.A.
4150 S. 100th East Ave., Suite 401
Tulsa, OK 74146
Ethan.Edwards@PEC1.com

OWNER: Mark Daniels, P.E.
Norman Utilities Authority
P.O. Box 370
Norman OK 73070
Mark.Daniels@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 _____ day of _____, 20____.

Professional Engineering Consultants, P.A. - ENGINEER

ATTEST

By: _____

Title: _____

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: _____

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ATTACHMENT A

SCHEDULE

Task	Task Description	Days after Notice to Proceed
1a	Kickoff / Workshop Meeting	10
1b	Survey Services/ Geotechnical Investigations	30
1c	Existing Plans, Maps, Aerial Photos	15
1d	Preliminary Contract Documents/Specifications/Plans/ Review Meeting	120
1e	Coordination	120
2a	Final Contract Documents/Specifications/Plans	60 days after receipt of Owner's comments
2b	Final Review Meeting/ Bidding Assistance	180
2c	Project Management	TBD
3a	Construction Management and Preconstruction Conference	TBD
3b	Attendance at Monthly Progress Meetings	TBD
3c	Progress Payments/Pre and Final Inspections	TBD
3d	Submittals	TBD
3e	Record Drawings	30 days after receipt of Contractor as-built

ATTACHMENT B**SCOPE OF SERVICES**

ENGINEER shall perform the following SERVICES under this AGREEMENT:

1) PRELIMINARY DESIGN SERVICES

- a) Kickoff Meeting. An initial Kickoff/WorkShop meeting will be held in Norman to establish critical design issues and parameters while discussing Project Responsibilities, Scope of Work, Schedule, and Project Milestones. The intent is to bid a composite elevated water storage tower as the base bid and a spheroid elevated water storage tower as an alternative #1 bid. Information necessary for the Project will be listed and responsibilities and due dates for obtaining this information will be assigned. A key function of this meeting will be to site the proposed elevated storage tank, determine waterline alignment, and determine access road requirements. Attendance will consist of the ENGINEER'S Design Team and OWNER'S Staff.
- b) Survey Services and Geotechnical Investigation. Perform topographic survey approximately 100 feet wide along the proposed access road, 60 feet wide along proposed waterline alignment and a 300 feet by 300 feet area at the proposed water tower in sufficient detail to permit development of design plans and specifications and construction of the proposed improvements. Survey shall include existing ground elevations and locations of above ground topographic features such as structures, roadways, driveways, sidewalks, fences, manholes, sewer cleanouts, water valves, water meters, gas valves, gas meters, utility poles, junction boxes, above ground public and private utility appurtenances, trees, shrubs, etc. Underground utilities will be located from above ground appurtenances and flagging or other evidence of underground utilities provided by the utility owner. Survey will also include locating section corners, quarter section corners, and property corners necessary to show existing property lines, rights-of-way, and easements within the project corridor, and to determine proposed easements and rights-of-way necessary for the project. The ENGINEER shall retain the services of an OWNER approved, licensed geotechnical consultant to obtain soil borings and prepare a written report of the subsurface data. Three (3) boring will be conducted to a depth of thirty (30) feet at the proposed elevated storage tank site with an additional three (3) borings to a depth of ten (10) feet will be conducted along the driveway alignment and an additional three (3) borings to a depth of ten (10) feet will be conducted along the waterline alignment. The report will include laboratory test results, evaluations, and recommendations of suitable foundation systems for the water tower and pavement design for the access road. Primary concerns are soil classifications and depths, rock type and depth (if any), trench stability, and depth to water table. The OWNER shall approve the locations of the soil borings prior to the work being conducted. Additional borings beyond those included above or special testing will be requested through a supplemental agreement. The estimated cost is a not to exceed allowance.
- c) Existing Plans, Maps, Aerial Photos. The ENGINEER shall meet with the OWNER to obtain existing plans, maps, and aerial photos, if available. These items will be discussed at the Kickoff Meeting. Additional information may be requested as needed during design.
- d) Contract Documents: Prepare plans and specifications in accordance with current design criteria of the ODEQ and the OWNER. The work completed will include horizontal and vertical location of tower, site drainage, site access roads and entrance features, lighting, landscaping, security fencing, tower configuration including interior access, interior lighting, interior piping, interior valving, interior access hatches, air venting systems, inlet/ outlet piping to enhance mixing of the storage tank, overflow structures, telemetry, painting and coating requirements, logo and FAA coordination. The water line alignment and details will receive approval from the OWNER at this meeting. The water tower configuration as well as logo will be discussed in detail. The above information will allow the ENGINEER to continue on to final

design. The ENGINEER shall attend a maximum of one (1) onsite meeting with the OWNER to discuss the 60% plan submittal and provide comments to the ENGINEER, as necessary.

- i) Prepare technical specifications to fully describe the intended work and convey the intent of the design. The intent is to bid a composite elevated water storage tower as the base bid and a spheroid elevated water storage tower as an alternative #1 bid. Award of the project will be based on the best bid, which will include cost and contract time as submitted in the bidding documents by the bidder. ENGINEER may utilize City of Norman Standard Specifications and Construction Drawings (City Specifications) to the maximum extent possible. For all items not adequately covered in the City Specifications, the ENGINEER will provide supplemental specifications and drawings. Details for Erosion Control measures shall be included as required. Specifications used in this PROJECT will be submitted in a digital format acceptable to the OWNER.
- ii) Plans and Specifications prepared by the ENGINEER shall comply with the applicable portions of Oklahoma Department of Environmental Quality Rules and Regulations, Federal Aviation Administration Obstruction Evaluation / Airport Airspace Analysis (OE/AAA).
- iii) Prepare contract documents for the proposed work on a unit price basis. Each unit price bid item will be included. Supplemental specifications shall include a measurement and payment description. Bid Alternates will be included if requested by the City.
- iv) Furnish 3 set of the draft drawings, specifications and bidding documents of the OWNER. In addition, furnish additional sets to all utility companies affected by the PROJECT. Revise documents as necessary to reflect utility company and OWNER comments. Provide design information to each utility company as necessary to assist them with preparation of their proposed relocation plans.
- e) Coordination. Initiate coordination with other City Departments, and other administrative and regulatory Agencies, such as the Corps of Engineers, Oklahoma Department of Transportation, the Oklahoma Department of Environmental Quality and Federal Aviation Administration.

2) FINAL DESIGN SERVICES:

- a) Final Contract Documents: Incorporate modifications requested by the OWNER into the final contract documents including construction drawings, specifications, and bidding documents. Furnish 3 sets of the final drawings, specifications and bid documents to the OWNER. Prior to the advertisement for bids, provide contract documents and construction permit applications to appropriate Federal, State, and local agencies from which approval of the PROJECT must be obtained. Prepare engineering design report and necessary calculations to comply with ODEQ requirements. Provide updated construction cost estimate. If necessary, incorporate modifications requested by permitting agencies and obtain all required design approvals and permits prior to advertisement for bids. The OWNER will be responsible for fees associated with reviews and permits. Check with the utility companies to determine whether the necessary utility relocations have been completed and check with the OWNER to determine whether the required easements have been acquired prior to advertisement for bids. Make all OWNER requested changes to the final plans and re-submit to OWNER. Submit plans to other parties associated with PROJECT such as OWNER, ODEQ, and utility companies, as required.
- b) Bidding Assistance: Prepare advertisement for bids and coordination of publication of bidding notice with the OWNER. Award of the project will be based on the best bid, which will include cost and contract time as submitted in the bidding documents by the bidder. Distribute copies of the final contract documents to prospective bidders, material suppliers, and other interested parties. The OWNER will be responsible for advertisement costs.
 - i) Conduct pre-bid conference and, in conjunction with the OWNER, issue addenda, if necessary, prior to the bid opening. Transmit addenda to all plan holders.

- ii) Provide a written estimate of the probable construction costs for the project.
- iii) Conduct bid-opening proceedings and tabulate bid proposals. Review and evaluate the bids received including responsiveness of the bid proposals. Assist OWNER in evaluating Bids and in assembling and awarding contracts for the work.
- c) Project Management: Submit monthly progress reports due no later than five working days after the end of the preceding month. Attend the referenced conferences, Public Meetings, monthly meetings, and design workshop meetings with the OWNER or other party, if directed by the OWNER.

3) CONSTRUCTION SERVICES:

- a) Construction Management and Preconstruction Conference: Upon award of the contract(s), furnish three (3) sets of the drawings, specifications and contract documents to the OWNER and three (3) sets to the PROJECT contractor for execution. Provide construction specifications to OWNER on electronic media.
 - i) Conduct pre-construction conference and, in conjunction with the OWNER, issue clarifications in response to questions raised at the conference. Attend monthly progress meetings with the OWNER and the PROJECT contractor. Meet with OWNER staff and/or the City Council for PROJECT discussions, coordination and presentations as required by the OWNER.
- b) Attendance at Bi-Monthly Progress Meetings: Provide general engineering review of the work as construction progresses to ascertain that the PROJECT is conforming to the design concept. Submit progress reports, including minutes of the progress meetings, due no later than five working days after the end of the preceding month.
- c) Progress Payments/Pre and Final Inspections: Review the contractor's application for progress payments and, when approved, submit to the OWNER for payment. Prior to submitting the final pay estimate, submit a written statement of completion with recommendation that the OWNER accept the improvements.
 - i) Interpret the intent of the drawings and specifications to protect the OWNER against defects and deficiencies in construction on the part of the PROJECT contractor(s). On a timely basis, prepare and recommend necessary contract change orders for consideration by the OWNER.
 - ii) Perform interim and "pre-final" inspections of the completed work. Develop a punch list of items required and forward it to the PROJECT contractor and OWNER. Issue statement of substantial construction completion and submit a written certification to the OWNER.
- d) Submittals: Ensure that the PROJECT contractor provides appropriate submittals and obtains approval prior to incorporation into the work. Perform timely reviews of the submittals or shop drawings delivered by the PROJECT contractor for conformance with the contract documents. Provide written confirmation to the OWNER that each approved submittal conforms to the applicable specifications.
- e) Record Drawings: Provide one (1) set of reproducible record (as-built) drawings on mylar, two (2) sets of prints as well as the drawings on electronic media diskettes after completion of the PROJECT. As-Built drawings will be based upon the Construction Plans and revisions thereto recorded by the PROJECT contractor during the PROJECT and reviewed by the resident inspector.

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. Details are presented in Exhibits A-1 as well as the Proposals from the Lemke Land Surveying and Kleinfelder.

Task	Task Description	Lump Sum Amount
1a	Kickoff / Workshop Meeting	\$3,000
1b	Survey Services	\$3,300
1b	Geotechnical Investigation	\$5,300
1c	Existing Plans, Maps, Aerial Photos	\$1,900
1d	Preliminary Contract Documents/Specifications/Plans	\$77,700
1d	Preliminary Review Meeting	\$4,200
1e	Coordination	\$16,000
2a	Final Contract Documents/Specifications/Plans	\$32,300
2b	Final Review Meeting	\$3,400
2b	Project Management	\$11,900
2c	Bidding Assistance	\$6,000
3a	Construction Management and Preconstruction Conference	\$19,300
3b	Attendance at Bi-Monthly Progress Meetings	\$6,500
3c	Progress Payments/Pre and Final Inspections	\$9,300
3d	Submittals	\$9,100
3e	Record Drawings	\$9,700
	Total Fee	\$218,900

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