

AGREEMENT
FOR
ENGINEERING SERVICES

This AGREEMENT, between the Norman Utilities Authority (OWNER) and Dunham Engineering, INC., (ENGINEER);

WITNESSETH

WHEREAS, OWNER intends to rehabilitate the 100,000 gallon backwash elevated storage tank located at the water treatment plant in Norman, OK. The tank will meet AWWA D100 Standards and ODEQ chapter 626 rules and regulations for potable water storage. This PROJECT will be identified as WTP Backwash Tower Resurfacing Project as further described in Attachment B.

WHEREAS, OWNER requires professional engineering services and construction inspection 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 September 12th, 2018.

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) 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 CONSULTANT 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 CONSULTANT in the performance of services under this Agreement. OWNER agrees to defend, indemnify, and hold harmless the CONSULTANT, 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 CONSULTANT 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 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 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: Joe Seiter, P.E.
Dunham Engineering, Inc.
6101 Melrose Lane
Oklahoma City, OK 73127
405-593-7553
jseiter@dunhamengineering.com

OWNER: Chris Mattingly, P.E.
Norman Utilities Authority
201-C West Gray
P.O. Box 370
Norman OK 73070
405-217-7778
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.

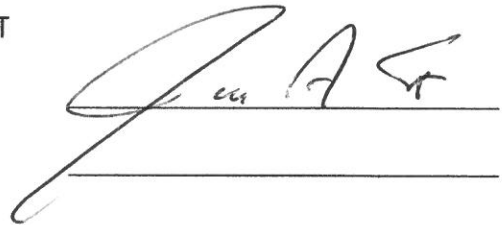
DATED this 12th day of September 2018.

Dunham Engineering, Inc. – ENGINEER

ATTEST

By: Joe Seiter, P. E.

Title: Branch Manager



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

A – PREPARATION OF TECHNICAL PLANS & SPECIFICATIONS:

ENGINEER agrees to pre-construction inspection including lead sampling and testing. If lead is present the ENGINEER agrees to include all current standards for lead removal and disposal in the specification.

ENGINEER agrees to prepare the design, produce engineering plans and specifications, prepare the contract documents, advertise for bids to selected contractors and recommend award of a lump sum construction contract to complete the WORK for the OWNER.

ENGINEER shall provide a draft set of contract documents for review and approval to the OWNER within 60 calendar days following receipt of Notice to Proceed from the OWNER.

B – PREPARATION OF TECHNICAL PLANS & SPECIFICATIONS:

ENGINEER shall finalize the documents and advertise the WORK to selected contractors for bid after approval of OWNER within 30 calendar days following receipt of approval from NUA.

ENGINEER agrees to assist the OWNER in opening and reviewing bids and recommending a contractor for award.

C – CONSTRUCTION MANAGEMENT:

ENGINEER agrees to review and approve contractor's shop drawings to insure they are in compliance with the design specification.

ENGINEER agrees to process contractor progress payments and recommend payment by the OWNER.

ENGINEER agrees to prepare and process Contract Change Orders as required during the course of the construction contract.

D – CONSTRUCTION INSPECTION:

ENGINEER agrees to periodically inspect the contractor during the construction period to ensure contract compliance.

ENGINEER agrees to conduct a final inspection of the WORK and to recommend final payment for the CONTRACTOR when the WORK is completed.

ENGINEER agrees to schedule and conduct a one year warranty inspection of the WORK prior to the end of the warranty period and to coordinate completion of any required warranty repairs.

Failure of ENGINEER to comply with above schedule for various tasks or subtasks may result in OWNER's termination of this AGREEMENT.

**ATTACHMENT B
CITY OF NORMAN
WTP BACKWASH TOWER RESURFACING PROJECT
SCOPE OF SERVICES
August, 14, 2018**

1.0 SCOPE OF THE PROJECT

This contract will provide the technical plans and specification for the rehabilitation of the 100,000 gallon backwash elevated storage tank located at the Water Treatment Plant in Norman, OK. Once the prescribed technical plans and specifications are bid and Contractor completes project as planned, the tank will meet AWWA D100 Standards and ODEQ chapter 626 rules and regulations for potable water storage.

2.0 SCOPE OF SERVICES

The following services will be provided:

A. DESIGN SERVICES

1. Hold a design kick-off meeting with staff and water treatment plant personnel to gather data and share information regarding the resurfacing project. Schedule a date and time for ENGINEER assigned employee to climb tank and identify items to be addressed that no longer meet AWWA D100 Standards and ODEQ chapter 626 rules and regulations for potable water storage.
2. Perform inspection and photograph existing conditions of coatings, hatch, ladder, vent pipe, railing, overflow pipe, safety harness system. In addition, perform additional testing to determine whether lead paint will be experienced as part of the project.
3. Provide a summary report of the findings that include recommendations for the coating system, structural repairs, and miscellaneous repairs and verify anticipated Project Cost.
4. Once summary report is approved by City staff, ENGINEER will prepare a 75% draft set of design engineering plans and specifications including advertisement for bids, bid form and fully detailed bid items, contract and bond documents, and special conditions associated with this project.
5. Once 75% draft set is approved by City staff, ENGINEER will finalize 100% plans and specifications and assist staff with bidding project.

B. BIDDING SERVICES

1. For Advertisement, coordinate the bid advertisements, and sell bid packets from the ENGINEER's office.
2. Hold a pre-bid conference at the Owner's request.
3. Prepare and issue all addenda.
4. Attend and assist at bid opening.
5. Review all bids and prepare a bid tabulation.
6. Prepare an opinion of the bids relative to award of the construction contract.

Deliverables

- i. Core drawings and specifications
- ii. Draft 100% quality control review plans and specifications
- iii. Draft 100% Opinion of Probable Construction Cost

- iv. Engineering Design Report and required design calculations
- v. Final sealed plans and specifications
- vi. Final Opinion of Probable Construction Cost

C. CONSTRUCTION ADMINISTRATION SERVICES

ENGINEER shall provide the construction administration services for the construction period, as summarized below:

1. Conduct the pre-construction conference and issue the necessary memoranda to begin a successful project. All roles and responsibilities of project participants will be identified and discussed. Staging area will be identified, as well as covering important topics such as submittal process, pay process, hours of operation, job site safety, and inspection coordination requirements.
2. ENGINEER will coordinate with contractor all necessary tests for contractor personnel and all required disposal documentation should lead be present.
3. All progress and coordination meetings necessary during the project shall be coordinated by ENGINEER.
4. Review all shop drawings associated with the construction.
5. Prepare and process construction pay estimates and make recommendations for each.
6. Review and make comments on the contractor's proposed construction schedules. Monitor the progress for each process relative to the approved schedule throughout the construction project and report problems, concerns, and proposed remedies to Owner.
7. Evaluate to present options and opinions for consideration by the Owner on claims submitted by the contractors.
8. Evaluate and prepare change orders necessary for the project and make recommendations to Owner.
9. Compile pre-construction and construction photographic and video documentation of the project.
10. Conduct pre-final inspections with the contractor and prepare the necessary punch lists for distribution.
11. Conduct the final inspections after completion of the punch lists by the contractors.
12. Review all contractual requirements of the contractor and recommend project acceptance to the Owner upon satisfactory completion.
13. Update electronic files (ACAD) of construction drawings to reflect the "as-constructed" configuration of the project. Submit to Owner 1 set of reproducible record drawings at completion of project. Submit to Owner 1 set of electronic files of construction drawings.

D. CONSTRUCTION INSPECTION

1. ENGINEER agrees to periodically inspect the contractor during the construction period to ensure contract compliance.
2. ENGINEER will conduct final inspection of the work and recommend final payment for the Contractor once the work is completed.
3. ENGINEER will schedule and conduct a one year warranty inspection of the work prior to the end of the warranty period and coordinate completion of any required warranty repairs.

3.0 ADDITIONAL SERVICES

Additional Services are those services not included in General Services that may be required for the Project but cannot be defined sufficiently at this time to establish a Scope of Work. These include, but are not necessarily limited to the following:

- a. Other services not included in Basic that are approved by the OWNER.
- b. Modification of design criteria or significant design changes following review and comment on the 100% design document submittals.
- c. Labor and Analytical costs associated with water quality sampling, not included in Basic or Special Services.
- d. Archeological investigations
- e. GIS processing of geophysical and/or geotechnical data beyond the assumptions provided in Basic or Special Services.
- f. Preparing applications and supporting documents for grants, loans, or planning advances for providing data for detailed applications.
- g. Providing additional copies of reports, plans, specifications, OPCC's and contract documents beyond those specifically described in Basic and Special Services.
- h. Preparing environmental impact statements, storm water discharge permits, and 404 permit applications, except as specifically included in the Basic Engineering Services.
- i. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties other than condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the OWNER.
- j. Payment of fees for permit applications and publication(s) of notices.
- k. Public relation activities and consulting services.
- l. Additional Easement Services by the Surveyor beyond the dollar amount included for the allowance
- m. Services known to be required for completion of the PROJECT that the OWNER agrees are to be furnished by the ENGINEER or by a sub-consultant that cannot be defined sufficiently at this time to establish the maximum compensation.

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	Total
A.	Design Services	\$10,000
B.	Bidding Services	\$2,000
C.	Construction Administration Services	\$8,000
D.	Inspection Services	\$10,000
	Total Fee	\$30,000

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.

No budgetary allowance has been established for Additional Services. Additional services must be authorized by amendment to this agreement.