

Consulting and Lab Services Agreement

THIS AGREEMENT, made and entered into effective this _____ day of _____, 2019, by and between NORMAN UTILITIES AUTHORITY, a municipal corporation, hereinafter referred to as "CLIENT", and Cove Environmental LLC., having principal offices at 3400 W. Lakeview Road, Stillwater, Oklahoma 74075 hereinafter referred to as "CONSULTANT".

Analytical Services: Bio-Monitoring Program/ Whole Effluent Toxicity Testing

WITNESSETH THAT:

WHEREAS, CLIENT desires to have CONSULTANT provide services, which may include consulting, engineering, procurement and other services mutually acceptable to CONSULTANT and CLIENT, hereinafter referred to as the "Work", and

WHEREAS, CONSULTANT has the resources, technically competent personnel and the desire to undertake the Work, and

WHEREAS, the parties hereto desire that the Work be performed on the basis of the terms provided herein.

NOW THEREFORE, CLIENT and CONSULTANT, for and in consideration of the mutual covenants and agreements herein contained, agree as follows:

ARTICLE 1. DEFINITION OF THE WORK

1.1 The Work to be provided by CONSULTANT under this Agreement shall consist of Environmental Regulatory Consulting and Testing Services and other services to the extent mutually agreed upon by CLIENT and CONSULTANT. In general terms, the Environmental Regulatory Consulting Services shall include Whole Effluent Toxicity (WET) testing, Toxicity Identification Evaluation (TIE) and Toxicity Reduction Evaluation (TRE) as required of the Authority by the Oklahoma Department of Environmental Quality (ODEQ) through Oklahoma Pollutant Discharge Elimination System Monitoring Permit (OPDES) Number OK0029190.

1.2 WET Testing

1.2.1 WET tests shall be conducted in accordance with the specifications in the Authority's OPDES Permit Number OK0029190, and/or any other requirements specified by ODEQ.

1.2.2 Test organisms are Pimephales promelas (fathead minnows) and Ceriodaphnia dubia (water flea).

- 1.2.3 The following test methods shall be used:
- a. Ceriodaphnia dubia (water flea) chronic static renewal 7-day survival and reproduction test, Method 1002.0, EPA-821-R-02-013 (October 2002), or the most recent update thereof.
 - b. Pimephales promelas (Fathead minnow) chronic static renewal 7-day larval survival and growth test, Method 1000.0, EPA-821-R-02-013 (October 2002), or most recent update thereof.
- 1.2.4 Concurrent effluent testing with Pimephales promelas, 7-day chronic NOEC static renewal, freshwater tests:
- a. Total ammonia and pH analysis is to be conducted on each sample upon arrival.
- 1.2.5 OPDES Permit Number OK0029190 requires that WET tests be conducted quarterly with retests required as needed. CONSULTANT shall coordinate the sampling schedule with CLIENT.
- 1.2.6 A written report detailing the results of each WET test, whether completed or not, shall be submitted to the Norman Water Reclamation division within ten (10) working days of the termination of the test. Either the Lab Manager or Plant Manager for the Norman Water Reclamation division shall be contacted by telephone or email within two (2) business days after completion of each WET test and notified of the test results. Failure to do so will result in a deduction of (20%) twenty percent of the cost of the Work, per day of delay, up to the full price of the Work. Repeated failures to provide data in a timely manner may be grounds for termination of this agreement.
- 1.3 TRE/TIE Services
- 1.3.1 If necessary, the CONSULTANT will work with CLIENT to develop a TRE Plan, acceptable to ODEQ, for implementation in the event that it becomes necessary.
 - 1.3.2 In the event that failed WET tests result in a requirement that the CLIENT conduct a TRE/TIE, the selected firm will work with staff from the Norman Water Reclamation division to implement the TRE Plan.
 - 1.3.3 The CONSULTANT is responsible for preparing the required reports for submittal to ODEQ, at the intervals required by ODEQ, detailing the results and progress of the implementation of the TRE Plan. All such reports shall be provided to the Plant Manager for the Norman Water Reclamation division ten (10) working days prior to the report's ODEQ due date. Failure to do so will result in a deduction of (20%) twenty percent of the cost of the Work, per day of delay, up to the full price of the

Work. Repeated failures to provide data in a timely manner may be grounds for termination of this agreement.

ARTICLE 2. CLIENT CONTACTS

2.1 The CLIENT designates the following people as designated representatives for the purposes of this agreement unless otherwise stated:

2.1.1 Utilities Plant Manager, Norman Water Reclamation Division

2.1.2 Utilities Supervisor, Norman Water Reclamation Division

2.1.3 Environmental Services Coordinator, Environmental Services Division

2.1.4 Assistant Environmental Services Coordinator, Environmental Services Division

2.1.5 Lab Manager, Norman Water Reclamation Division

2.1.6 Administrative Technician III, Norman Water Reclamation Division

ARTICLE 3. SAMPLES AND SHIPPING

3.1 CONSULTANT shall provide all necessary unused sample containers that are BPA free, ice chests, refrigeration/cooling packs or containers, shipping labels, and chain of custody forms for proper sample handling in accordance with EPA, ODEQ, and Standard Methods for the Examination of Water and Wastewater QA/QC requirements.

3.2 All shipping cost will be paid by CONSULTANT.

3.3 Sample collection, shipping, and testing will be scheduled with the Lab Manager for the Norman Water Reclamation division.

3.4 CONSULTANT must have qualified personnel available to receive samples when they are scheduled to arrive.

3.5 CONSULTANT must record the temperature of the samples upon arrival at the laboratory.

3.6 CONSULTANT shall immediately notify the Lab Manager for the Norman Water Reclamation division (phone call or email) when a scheduled sample has not been received by the specified time on the date expected.

- 3.7 Transportation of samples shall occur in a timely manner so as not to exceed allowable sample holding times.

ARTICLE 4. CHANGES; TIME OF PERFORMANCE

CONSULTANT shall initiate Work upon notice by CLIENT to do so and shall exert reasonable efforts to complete same by the date mutually agreed upon. The CLIENT reserves the right to add to or subtract from the estimated quantities or amount of Work as discussed in the RFP. The Work to be performed or deducted shall be at the unit price listed in the price schedule in Exhibit A.

ARTICLE 5. COMPENSATION TO CONSULTANT

CLIENT shall pay CONSULTANT for (i) Compliance Testing and TIE/TRE unit prices as set forth in Exhibit A, (ii) Staff Charges set forth in Exhibit B for additional time spent by CONSULTANT personnel on any additional Work requested by CLIENT that is excluded from what was set forth in Exhibit A, and (iii) the other reimbursable costs and expenses ("Reimbursable Costs") described in Exhibit B. The rates for Staff Charges and Reimbursable Costs are firm through December 31, 2019 and shall be subject to annual adjustment effective January 1st of each calendar year.

CLIENT's invoices shall be mailed to:	CONSULTANT's payments shall be mailed to:
Norman Water Reclamation Facility	Cove Environmental LLC. (vendor #13364)
P.O. Box 370	3400 W. Lakeview Rd
Norman, Oklahoma, 73070	Stillwater, Oklahoma 74075

ARTICLE 6. INVOICING AND PAYMENT

- 6.1 CLIENT shall make all payments in United States dollars by check or by wire transfer to a bank account designated by CONSULTANT from time to time during the term of this Agreement. CONSULTANT shall invoice the CLIENT for each biomonitoring test once the report has been accepted. CONSULTANT shall invoice the CLIENT for each TIE/TRE report upon its acceptance by the CLIENT. CLIENT shall pay the full amount of such invoices within thirty (30) calendar days of invoice date. CONSULTANT may assess and CLIENT shall pay finance charges of no more than 1.5% per month on past due balances for accounts more than ten (10) days past due and will begin to accrue on a daily basis, beginning the 11th day past due. Payments by CLIENT will thereafter be applied first to accrued interest and then to the principal unpaid balance. Any attorney fees, court costs, or other costs incurred by CONSULTANT in collection of delinquent accounts

shall be paid by CLIENT. CONSULTANT reserves the right to discontinue working on projects if payment is not received within thirty (30) days of the due date for each invoice. If a WET test fails to meet the minimum control performance criteria, the CONSULTANT must initiate a new test at their own expense. The CLIENT will provide replacement effluent samples.

- 6.2 CLIENT shall inform CONSULTANT of any errors or inconsistencies and CONSULTANT shall correct the same before the CLIENT is required to pay the invoice.
- 6.3 The CONSULTANT will not undertake to furnish any materials or to perform any Work not specifically authorized under the terms of this Agreement unless additional materials or Work are authorized by the CLIENT through one of its designated representatives; and that in the event any additional Work or materials are provided by the CONSULTANT without such authorization, the CONSULTANT shall not be entitled to any compensation therefore whatsoever.

ARTICLE 7. TERMINATION

CLIENT shall have the right to terminate the Work upon a 30 days written notice to CONSULTANT regardless of reason. Any violation of this agreement shall constitute a breach and default of this agreement. Upon such breach, the Authority shall have the right to immediately terminate the agreement and withhold further payments. Such termination shall not relieve the selected firm of any liability to the Authority for damages sustained by virtue of a breach of the selected firm.

ARTICLE 8. CONFIDENTIAL INFORMATION

- 8.1 CONSULTANT shall treat as confidential information furnished by CLIENT which CLIENT identifies as being confidential and shall return to CLIENT, upon written notice by CLIENT, except for one (1) file copy so that CONSULTANT may determine legal obligations it may have hereunder. CONSULTANT shall agree not to use said confidential information furnished by CLIENT except in connection with the Work. The foregoing obligations shall not apply to information that:
 - 8.1.1 is or becomes available to the public through sources independent of or through no fault of CONSULTANT, or
 - 8.1.2 is in CONSULTANT's possession prior to the receipt of information from CLIENT, or
 - 8.1.3 is received by CONSULTANT from a third party who has the right to disclose same, or

- 8.1.4 is subsequently independently developed without reference to CLIENT's information, or
- 8.1.5 is required to be disclosed by CONSULTANT pursuant to court order.
- 8.2 CONSULTANT's obligations under this Article with respect to confidential information shall remain in effect for a period of two (2) years after receipt by CONSULTANT of same.

ARTICLE 9. RESPONSIBILITY OF CONSULTANT

- 9.1 The CONSULTANT shall maintain certification with the Oklahoma Department of Environmental Quality (ODEQ) and The National Environmental Laboratory Accreditation Conference Institute (TNI) to perform all of the laboratory analysis agreed to in this Agreement. If this certification is terminated for whatever reason, the CONSULTANT shall immediately notify the CLIENT. Loss of ODEQ or TNI certification may be grounds for termination of this agreement.
- 9.2 All laboratory work, including the statistical analysis, quality control review, and project management shall be performed by qualified personnel with at least three (3) years of experience performing such work.
- 9.3 Quality Assurance/Quality Control Program
 - 9.3.1 CONSULTANT will participate in EPA DMR-QA and Water Pollution Studies for all parameters covered in this contract. The laboratory shall participate in one or both studies by conducting analysis using test samples obtained from an EPQ approved source and report the test results to the CLIENT.
 - 9.3.2 CONSULTANT shall adhere to a comprehensive and well-documented quality control program. The program shall be sufficient to validate all analytical data used for EPA and ODEQ permit compliance.
 - 9.3.3 Quality assurance and quality control (QA/QC) procedures associated with the appropriate test method must be followed with each test. Documentation of the QA/QC shall be included with all WET test reports, in a form acceptable to US EPA and ODEQ, with each WET test report.
- 9.4 CONSULTANT will perform its Work in accordance with the standards of care and diligence normally practiced by recognized consulting and engineering firms in performing services of a similar nature. CONSULTANT will also perform its Work in compliance to the standards written in CLIENT's Oklahoma Pollutant Discharge Elimination System (OPDES) permit #0029190 and the Code of Federal Regulations Chapter 40 Part 136(40 CFR Part 136). These are a part of this Agreement as fully as if

the same were set out at length. The Work done must be to the standards established by the Environmental Protection Agency and Oklahoma Department of Environmental Quality. No other guarantees are included or intended in this Agreement or in any report, opinion, deliverable, work product or other document delivered by CONSULTANT to CLIENT in connection with the services provided by CONSULTANT to CLIENT.

ARTICLE 10. FORCE MAJEURE

If either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than CLIENT's obligation to make payments hereunder, that party shall give to the other party prompt written notice of the force majeure with reasonably full particulars concerning it. Thereupon the obligations of the party giving notice, so far as they are affected by the force majeure, shall be suspended during, but no longer than, the continuance of the force majeure. The affected party shall use reasonable diligence to remove the force majeure. The term "force majeure", as herein employed, shall without limitation, mean an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockage, public riot, lightning, fire, storm, flood, explosion, governmental restraint, or other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the party claiming suspension.

ARTICLE 11. GOVERNING LAW

This Agreement shall be construed and the rights of the parties hereto shall be determined in accordance with the laws of the State of Oklahoma without reference to its conflict of laws provisions.

ARTICLE 12. ASSIGNMENTS AND SUBCONTRACTS

Notwithstanding the foregoing, CONSULTANT, may subcontract a portion of the Work to an affiliate of CONSULTANT after giving notice to and approval from CLIENT. In no case shall such subcontract relieve CONSULTANT of its obligations under this Agreement; provided, however, that if portions of the Work are so subcontracted, this Agreement sets forth the overall aggregate liability of CONSULTANT and its affiliates with respect to the Work, and control and inure to the benefit of such affiliates.

ARTICLE 13. INSURANCE

CONSULTANT shall, at its sole cost, obtain and maintain in force for the duration of the Agreement insurance of the following types, with limits not less than those set forth below:

- 13.1 Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory or province having jurisdiction over

CONSULTANT's employees and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident, and \$1,000,000 per employee for bodily injury by disease, and \$1,000,000 policy limit. CONSULTANT shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance, or otherwise attempt to opt out of the statutory Workers' Compensation system.

- 13.2 Automobile Liability Insurance covering use of all automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name CLIENT, including its affiliates, directors and employees, as additional insureds to the extent of CONSULTANT's acts or omissions or the acts or omissions of those acting on CONSULTANT's behalf.
- 13.3 Commercial General Liability Insurance ("Occurrence Form") with a minimum combined single limit of liability of \$1,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$1,000,000 each person for personal and advertising injury liability; and a minimum limit of liability of \$1,000,000 each occurrence for products/completed operations liability. Such policy shall have a general aggregate limit of not less than \$1,000,000. The policy shall be endorsed to name CLIENT, including its affiliates, directors and employees, as additional insureds to the extent of CONSULTANT's acts or omissions or the acts or omissions of those acting on CONSULTANT's behalf.
- 13.4 Professional liability and Contractor's Pollution liability insurance in the amount of \$1,000,000 per claim/\$1,000,000 per aggregate.
- 13.5 Umbrella/excess liability insurance on an occurrence basis, providing coverage in excess of underlying insurance described in this Article 13 and which is at least as broad as each and every one of the underlying policies, with limits of \$9,000,000 per occurrence and annual aggregate limit.¹
- 13.6 CLIENT and CONSULTANT hereby release the other, including affiliates, directors, members, managers, officers, employees and agents, and shall cause the insurers to waive their rights of subrogation against such released parties with respect to coverages referred to in this Article, for and with respect to losses or claims for bodily injury, property damage or other insured claims arising out of performance under this Agreement.
- 13.7 Certificates of Insurance satisfactory in form to CLIENT (ACCORD form or equivalent) shall be supplied to CLIENT evidencing that the insurance required above is in force, that not less than thirty (30) days written notice will be given to CLIENT prior to cancellation, and that the waivers of subrogation are in force. CONSULTANT shall also provide with its Certificate of Insurance executed copies of the additional insured endorsements required in this Article 13.
- 13.8 The foregoing insurance coverages shall be primary and non-contributing (except Automobile Liability) with respect to other insurance or self insurance which may be maintained by CLIENT.

ARTICLE 14. NON-SOLICITATION

CLIENT understands that CONSULTANT's personnel are assigned to CLIENT to render temporary service and are not employees of CLIENT nor assigned to become employed by CLIENT. CLIENT acknowledges that CONSULTANT has incurred considerable expense to recruit, train and maintain its employees. Accordingly, CLIENT will not, without the written consent of CONSULTANT and compensation for CONSULTANT's loss: (i) hire or solicit for hire employees of CONSULTANT, (ii) hire or solicit for hire former employees of CONSULTANT within the 6 month period following the termination of their employment with CONSULTANT, or (iii) interfere with the employment or contractual relationship between CONSULTANT and its employees (the "Obligations"). Should CLIENT fail to comply with the Obligations and one or more of CONSULTANT's employees accept employment with CLIENT, CLIENT agrees to pay CONSULTANT an amount equal to the greater of \$25,000 or 3 months of compensation rate for each such employee, which payment or payments shall constitute CONSULTANT's sole and exclusive remedy for issues related to such employment by CLIENT, in lieu of other remedies or causes of action.

ARTICLE 15. NOTICES

All notices, requests, approvals, authorizations, consents and other communications required or permitted under this Agreement shall be in writing (whether or not expressly stated as to be in writing hereunder) and shall be (as elected by the person giving such notice) hand delivered by messenger or overnight courier service, mailed (airmail, if international) by registered or certified mail (postage prepaid), return receipt requested, or sent via facsimile addressed to:

CLIENT: Norman Water Reclamation Facility
Mr. Steven Hardeman, Plant Manager
Norman Water Reclamation Facility
3500 Jenkins Ave
Norman, OK 73072
Phone: 405-292-9726
Fax: 405-292-9735
Email: steve.hardeman@normanok.gov
Email: kellie.seeds@normanok.gov

CONSULTANT: Cove Environmental LLC.
Attention: Justin Scott; Technical Director
3400 W. Lakeview Rd.
Stillwater, OK 74075
Phone: (405) 286-0668

Email: justin@covesciences.com
Email: shannon@covesciences.com

Each such notice shall be deemed delivered (i) on the date delivered if by hand delivery or overnight courier service or facsimile, and (ii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed (provided, however, if such actual delivery occurs after 5:00 p.m. (local time where received), then such notice or demand shall be deemed delivered on the immediately following Business Day after the actual day of delivery). By giving to the other parties at least fifteen (15) days written notice thereof, the parties hereto shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses.

ARTICLE 16. ENTIRETY OF AGREEMENT

This Agreement contains the entire contract, between the parties hereto, and there are no other promises, contracts, or warranties affecting it, and previous contracts and communications relative to the Work are hereof superseded. The parties contemplate that Purchase Orders, Job Orders or any other forms of payment authorization may be issued to CONSULTANT setting forth the scope of services to be performed, compensation and other special terms. The terms and conditions of this Agreement shall apply to each such Purchase Order, Job Order or any other form of payment authorization and shall take precedence over any conflicting or similar term and condition. The headings in this Agreement shall not be deemed part hereof or taken into consideration in the interpretations hereof.

ARTICLE 17. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one agreement. The Parties agree that a signature to this Agreement delivered by a facsimile transmission or PDF format via electronic mail shall be deemed an original signature to this Agreement for all purposes hereof.

ARTICLE 18. CONTRACT TERM AND RENEWAL

Unless terminated under the provisions of Article 7, this contract shall remain in effect for one year from the date of the signed Agreement. The Agreement may be renewed on an annual basis for up to an additional two years upon agreement of both parties.

Exhibit A

Cost Estimate

Quarterly Compliance Tests

Cove proposes to perform this scope of work described in the Technical Proposal. A breakdown of costs is included in the table below. All WET tests costs include sample kits, sample-pick up by a Cove employee, test costs, and final reports. Any repeat WET tests required due to test failure will be charged at the listed test price. Any repeat WET tests required due to test control failure will not result in additional charges to the City of Norman. **Compliance Test Cost Table**

Test Type	Price Per Unit	Units/Quarter	Total Costs
Fathead Minnow	\$625	1	\$625
Chronic NOEC			
<i>C. dubia</i> Chronic NOEC	\$625	1	\$625
pH	\$20	6	\$120
Ammonia	\$30	6	\$180
Total per Quarter1		\$1250	

TIE/TRE

Cove proposes to perform this scope of work described in the Technical Proposal. A breakdown of costs is included in the table below. **TIE/TRE Cost Table**

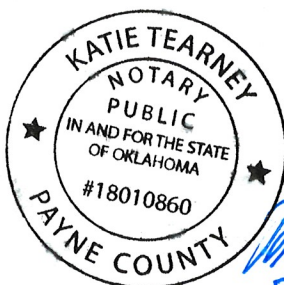
Test Type	Price Per Unit
TIE Treatment2	\$425
<i>C. dubia</i> Chronic screen	\$400
<i>P. promelas</i> Chronic screen	\$400

IN WITNESS WHEREOF, the said parties of the First and Second Part have hereunto set their hands and seals respectively the 11th day of January, 2019, and the ____ day of _____, 20____.

(Corporate Seal)

ATTEST:

Corporate Secretary (where applicable)



Justin Scott
Principal

Signed: Justin Scott
Authorized Representative
LAB TECHNICAL DIRECTOR
Title

Address: 3400 W. Lakeview Rd
Stillwater, OK 74075
Telephone: 405 406 8024

NORMAN UTILITIES AUTHORITY

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

Authority Attorney

Approved by the NORMAN UTILITIES AUTHORITY this ____ day of _____, 2016.

ATTEST:

Secretary

Chairman