

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, between the Norman Utilities Authority (OWNER) and CP&Y, Inc. (ENGINEER);

WITNESSETH

WHEREAS, OWNER intends to replace approximately 15,600 feet of existing waterline along the eastern side of North Flood Avenue from Robinson Street to Venture Avenue and associated inter-connections and appurtenances. This PROJECT, the Flood Avenue Waterline Replacement, will replace approximately 12,700 feet of 16-inch water line from Robinson Street to Tecumseh Road, and about 2,900 feet of 12-inch from Tecumseh to Venture Drive.

WHEREAS, OWNER requires survey, design and engineering services 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 the date last executed below.

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: John Levitt, P.E.
CP&Y, Inc.
2000 N Classen Blvd., Suite 1410
Oklahoma City, OK 7310
(405) 848-2346
jlevitt@cpyi.com

OWNER: Mark Daniels, P.E.
Norman Utilities Authority
201-C West Gray, 73069
P.O. Box 370
Norman OK 73070
405-366-5377
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, ENGINEER and OWNER have executed this AGREEMENT.

DATED this _____ day of _____, 20_____.

CP&Y, Inc., ENGINEER

ATTEST

Signed: _____
Authorized Representative

Corporate Secretary (where applicable)

Name and Title

(Corporate Seal) (where applicable)

Norman Utilities Authority- OWNER

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

Authority Attorney

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

ATTEST

By: _____
Chairman

Secretary

Seal

ATTACHMENT A

SCHEDULE

ENGINEER shall complete and submit 65% plans and specifications to the OWNER within one hundred and fifty (150) calendar days following receipt of Notice to Proceed from the OWNER.

ENGINEER shall complete and submit 100% plans and specifications to the OWNER within sixty (60) calendar days following receipt of 65% comments from the OWNER.

ENGINEER shall provide Construction Services to the OWNER following the successful bidding and award of the PROJECT(s).

ENGINEER shall submit as-built drawings to the OWNER within 30 calendar days after acceptance of construction PROJECT(s) by OWNER.

ATTACHMENT B

SCOPE OF SERVICES

Project consists of replacement of ductile iron pipe (DIP) water lines along the eastern side of North Flood Avenue from Robinson Street to Venture Avenue. The project will replace approximately 12,700 feet of 16-inch DIP with C900 PVC and approximately 2,900 feet of 12-inch DIP with C900 PVC.

CP&Y will provide the following tasks related to design, bidding, and construction administration for the project.

Task 1 – Preliminary Design Phase

1. Attend a pre-design project kickoff meeting with NUA Engineering and Line Maintenance staff. CP&Y, NUA staff, and other City departments will also discuss other projects occurring within the project limits: Public Works sidewalk improvements on the west side of Flood, Public Works Tecumseh Road improvements, Black Mesa Brewery improvements, future development, etc. CP&Y will provide meeting minutes for each.
2. Coordination with other public utilities – Electric, gas, telephone, fiber, sanitary sewer, storm sewer and private utilities – petroleum, natural gas.

Task 2 – Project Field Survey (Not to Exceed Allowance)

1. Lemke Land Surveying will perform a detailed survey of the project limits. Survey will include:
 - a) Detailed on ground survey of the corridor from Flood centerline to east right-of-way (ROW).
 - b) Existing utilities located within the project limits.
 - c) Location of all water meters, valve (valve and valve nut), fire lines, and fire hydrants to be reconnected or replaced.
Note: NUA Line Maintenance staff will provide a tabulation of existing meters to be replaced/reconnected, sizes, and service addresses for each.
 - d) Location of pavement (curb), driveways, parking areas, signage, traffic signals, signal wires, and other improvements within the right-of-way.
 - e) Limits of right-of-way and ownership information of properties adjacent to the ROW (east side only) along the project corridor.

Task 3 –Geotechnical Investigation (Not to Exceed Allowance)

1. Terracon will perform a geotechnical investigation and provide a report with findings and design recommendations. Report will include up to six (6) bores to an approximate depth of fifteen feet (15') each throughout the project limits.

Task 4 – Final Design Phase

Sub-task 4A: preparation of construction documents

1. Plans will included the following:
 - a) Cover sheet
 - b) General and Construction Notes
 - c) Project Control sheet
 - d) Overall project layout with ROW, permanent and temporary easements, and property owner information
 - e) Plan and profile sheets. Scale will be 1"=40' on 22" x 34" sheets but may be printed on 11"x17" sheets.
 - f) Storm Water Pollution Prevention Plan (SWPPP)
 - g) Standard and Special Details

2. Specifications will include the following:
 - a) NUA front end documents
 - b) Technical Specifications – NUA technical specifications will be used where appropriate.
3. Coordination with other public utilities – Electric, gas, telephone, fiber, sanitary sewer, storm sewer and with private utilities – petroleum, natural gas

Sub-task 4B: 65% Plans and Specifications

1. Submit four (4) copies of 65% plans, specifications, and Engineers' 65% Opinion of Probable Construction Cost (OPCC) for review and comment.
 - a) A 65% submittal review meeting will be held to discuss the deliverable and any City comments. Plans will be distributed by NUA staff to necessary City of Norman departments for review. Review meeting may include other interested departments. CP&Y will provide meeting minutes.

Sub-task 4C: 100% Plans and Specifications

1. Submit 100% plans and specifications for signature and advertisement.
 - a) CP&Y will submit 100% check prints for NUA final review.
 - b) Prepare Engineering Report per ODEQ requirements: comments and questions will be addressed at 65% design review meetings.
 - c) At least one alternative bid item will be included for the segment from Rock Creek Road to Robinson Street.
2. NUA will submit plans and engineering report to ODEQ.
 - a) CP&Y will assist NUA with required information for ODEQ Permit form.

Task 5 – Bid Phase

1. Produce and distribute contract documents. Documents will be provided electronically in PDF format on compact disks free of charge to potential bidders.
2. Maintain the Official plan holders list.
3. Attend a pre-bid meeting.
4. In conjunction with NUA staff, address questions from potential bidders.
5. Issue addenda, as required.
6. Review and evaluate bids, furnish bid tabulation, and provide a recommendation of award for the contract.

Task 6 – Construction Phase

Following contract award and issuance of the notice to proceed with construction, CP&Y will provide the following during the Construction Phase:

1. CP&Y will provide four (4) hard copy Conformed construction documents (Plans and Specifications) total to NUA and the contractor.
2. Attend a pre-construction meeting with NUA and Contractor.
3. Review contractor's submittals for conformance to contract documents.
4. Respond to Contractor's Request for Information (RFI).
5. Attend construction meetings as needed.
6. Make periodic (once per month) site visits to observe Contractor's progress.
7. Coordinate with NUA and Contractor to resolve construction conflicts as required.
8. Assist NUA staff to prepare Contract Change Order(s), if necessary.
9. Attend final walk through and assist in generating project punch list with NUA and Contractor.
10. Prepare construction record drawings (CRD) from information provided by the contractor and project inspector.
11. Provide NUA with ACAD and PDF files of the CRDs.

A1 – Easement Allowance - Fee: \$1,200 each

CP&Y will provide the following tasks:

1. Provide legal descriptions and easement exhibits as required.

A2 – Level 1 SUE/Pothole Allowance - Fee: \$1,000 each

CP&Y will provide the following tasks:

1. Level A Subsurface Utility Engineering (SUE).
 - a) Non-destructive Hydro-vacuum excavation of utility.
 - b) Horizontal and Vertical locate of utility and tied into survey.
 - c) Identification of utility size and pipe material.
 - d) Backfilling of excavation.

ADDITIONAL SERVICES (EXCLUSIONS)

The following services are not included in the above scope of work:

1. Fees for permits and applications including, but not limited to floodplain, ODEQ, grading, utilities, Section 404, CLOMR and/or LOMA, storm water discharge, hauling and disposal of any material.
2. Preparing applications and supporting documents for grants, loans, or planning advances for providing data for detailed applications.
3. Environmental or Cultural Resources studies and/or permits.
4. Earth Change Permit – To be obtained by the contractor.
5. Construction inspection, except as detailed above.
6. Construction staking and surveying.
7. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties.
8. Negotiation of easements with property owners.

ATTACHMENT C

COMPENSATION

ENGINEER will furnish monthly Project Update and Current Schedule

Task No.	Task Description	Total Fee
1	Preliminary Design Phase (Lump Sum)	\$23,500
2	Project Survey (Not to Exceed Allowance)	\$26,100
3	Geotechnical Investigation (Not to Exceed Allowance)	\$13,500
4a	Design (Lump Sum)	\$117,000
4b	65% Plans and Specifications(Lump Sum)	\$12,400
4c	100% Plans and Specifications(Lump Sum)	\$20,000
5	Bid Phase(Lump Sum)	\$19,000
6	Construction Phase (Lump Sum)	\$68,500
A1	Easement Allowance (Assume 5 @ \$1,200 each)	\$6,000
A2	Level 2 SUE/Pothole Allowance (Assume 5 @ \$1,000 each)	\$5,000
	TOTAL	\$311,000

The ENGINEER may submit interim statements, not to exceed one per month, for partial payment of SERVICES rendered. The statements to OWNER will be by task for the percentage of work actually completed. The OWNER shall pay said interim statements within thirty (30) calendar days.