

ACCESS AND CONSTRUCTION AGREEMENT

With

THE CITY OF NORMAN

The City of Norman (“CON”) and the Norman Utilities Authority (“NUA”) (Owner), hereby voluntarily consents to provide entry and access to the property in Cleveland County, OK, located at 3500 Jenkins Ave, Norman, OK 73072, as described in Exhibit A (Property) to the employees and authorized representatives, agents, consultants, contractors and subcontractors of the United States Environmental Protection Agency (EPA) in order to install equipment including monitoring wells and loggers and collect research samples. The activities conducted by EPA are to implement a research effort titled: “*Ecosystem Research on Water Reuse, Groundwater, and Surface Water Interactions to Evaluate Approaches that Improve Water Quality and Quantity with Nature-Based Infrastructure*” (the Project). EPA shall, in the exercise of the rights and privileges granted by this agreement, adhere to and comply with good engineering practices and all laws, ordinances, rules, regulations and orders applicable to EPA's activities, operations and work performed upon, or use of, the Property.

1. The following activities (the Work) may be conducted on the Property by the EPA and its contractors and representatives (Authorized Parties). Prior to commencement of the work to be performed, and any changes thereto, written notification of the description of the work will be provided to Owner and are covered by this authorization:

- Collection of surface water, groundwater, and soil samples on a quarterly to monthly basis;
- Installation of monitoring wells, sensors and data loggers;
- Construction of up to ten (10) ground water monitoring wells about ~3m deep or a ~meter into the shallow groundwater;
- Installation of ten (10) mini piezometers.

See Exhibit B - Quality Assurance Project Plan (QAPP) for method details.

4. *The Work shall be coordinated in advance with Owner. EPA shall provide Owner a copy of the schedule for the Work that includes construction with a 72-hour notice prior to commencement. Work that relates to typical sample collection will be coordinated with the Owner prior to entry. Shorter notice may be desirable if collection that corresponds to weather or flow events for water sampling is pursued.* EPA will coordinate with the designated contact person or other identified staff each time access is needed, and every effort will be made to stay out of the way of routine operations. *The initial notice, any subsequent notices or communications shall be provided to:*

City of Norman and Norman Utilities Authority

Christopher A. Mattingly, Utilities Director

City of Norman
P.O. Box 370,
Norman OK 73070
(405) 366-5494
chris.mattingly@normanok.gov

and

U.S. Environmental Protection Agency:

Kenneth J. Forshay, Research Ecologist
919 Kerr Research Drive,
Ada, OK 74820
phone 580-436-8912
forshay.ken@epa.gov

- 5. Owner shall provide the Property to EPA in "as-is" condition. EPA has inspected the Property and is satisfied that it is fit for EPA's purpose. Owner shall not be responsible for repairing maintaining or removing any alterations to or installations on the Property by EPA or its Authorized Parties.*
- 6. EPA's access to the Property is non-exclusive. EPA shall access the Property and perform the Work at all times so as not to unreasonably interfere with the use of the Property by Owner or any tenant, licensee or other occupant of the Property.*
- 7. Upon the completion of either of the activities included in the Work on the Property or upon the expiration of this Access Agreement, whichever shall earlier occur, EPA's Authorized Parties shall restore the portions of the Property disturbed by the Work to the same or substantially similar condition, based upon photographs to be taken by EPA's Authorized Parties prior to the commencement of the Work, as existed prior to the commencement of the Work. The foregoing will not apply to any wells and appurtenances required to be maintained by EPA on Owner's Property.*
- 8. Authorized Parties shall enter upon Owner's Property at their own risk, and Owner shall not be held responsible or liable for injury, damage, or loss incurred by any Authorized Party arising out of or in connection with activities under this Agreement, except to the extent that any injury is caused due to acts or omissions of Owner, any lessee of Owner's Property, or any employee or agent of the Owner.*
- 9. Nothing contained in this Access Agreement shall be deemed or construed to create the relationship of principal and agent. A memorandum of understanding of shared research interests describes the intended relationship between parties. See Exhibit C – Memorandum of Understanding between U.S. E.P.A. and City of Norman (MOU).*

10. *By giving consent, Owner does not waive or otherwise compromise its rights under federal, state or local law, nor under common law, with the exception of those rights waived in giving this consent.*

11. *This Access Agreement shall expire on December 31, 2028 unless earlier withdrawn, in which case notice of such withdrawal shall be made at least 30 days in advance. The expiration date may be extended by mutual agreement, confirmed in writing, prior to the expiration date.*

12. *This Access Agreement constitutes the entire agreement between the parties as to the access of the property and there are no agreements, representations or warranties not expressly set forth herein. This Access Agreement may not be changed or terminated orally but only by an instrument in writing signed by the party against whom enforcement is sought.*

13. *These terms, conditions, covenants, releases, provisions and undertakings shall be binding upon and inure to the benefit of the parties to this Access Agreement and their respective heirs, successors, representatives and assigns.*

14. *If any provision of this Access Agreement is held invalid under any applicable statute or rule of law, whether now existing or hereinafter passed or adopted, such invalidity shall not affect any other provision of this Access Agreement that can be given effect without the invalid provision, and, to this end, the provisions of this Access Agreement are declared to be severable. In such event, the particular provision held invalid shall be renegotiated and redrafted so as to comply with the particular statute or rule of law. In no event, however, shall this severability provision operate to as to alter in any material respect the basic understandings to the parties as to their respective obligations hereunder.*

15. *EPA, an agency of the federal government, shall be liable for claims, damages and injuries which may occur under this Access Agreement as provided in subsections a. and b. below:*

- a. *The Federal Tort Claims Act (28 U.S.C. 2671, 2680) provides coverage for damage or loss of property, or personal injury or death, caused by the negligent or wrongful act or omission of an employee of EPA while acting within the scope of his or her employment, under circumstances where EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.*
- b. *If an employee of EPA is injured while acting within the scope of his or her employment, government liability for that injury will generally be dictated by the provisions of the Federal Employees Compensation Act (5 U.S.C. 1801)."*

16. *This Agreement and MOU will be governed by the laws of the State of Oklahoma.*

The City of Norman and Norman Utilities Authority

U.S. Environmental Protection Agency

Larry Heikkla, Mayor and Chair

Greg Sayles, Ph.D.
Director
Center for Environmental Solutions and
Emergency Response
Title:

(Date)

(Date)

ATTEST:

City Clerk

CITY OF NORMAN:

Approved as to form and legality this *17* day of *August* 2023.

John Beale, Assistant City Attorney

EXHIBIT A - Location of accessible floodplain and river area outside of the wastewater treatment plant facility.

