

CONTRACT FOR ON-CALL CONSTRUCTION TESTING SERVICES

This contract for on-call construction testing services ("Contract") is entered into this ____ day of _____, 20__, by and between the City of Norman (a municipal corporation) ("City"), and its successors in interest, the Norman Utilities Authority ("NUA") and Norman Municipal Authority ("NMA"), referred to collectively as ("Owner") and Benchmark Consultants Services LLC. ("Consultant").

WITNESSETH:

CONTRACT NO. K-2324-135 ON-CALL CONSTRUCTION TESTING SERVICES

WHEREAS, the Owner requires the services of a Construction Testing Consultant to perform services in connection with miscellaneous City wide projects; and

WHEREAS, the Construction Testing Consultant will provide services for these projects in accordance with this Contract; and

WHEREAS, it is the intent of the Owner to utilize the services contained in this Contract on an as-needed basis for a period of three (3) years with the option for two (2) contract renewals each with a period of one (1) year for a contract length of five (5) years or longer as needed to complete any work started in the time frame from the date of the original Contract; However, the Owner reserves the right to terminate this Contract prior to the completion of the contract term at their convenience; and

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter relating to the project, the parties agree to the following:

1. Definitions. All items and phrases not expressly defined herein shall have their ordinary meanings, consistent with local and state law, except where the contract clearly indicates a different meaning. For purposes of this Contract, the following terms and phrases shall have the meaning subscribed herein:

- | | |
|----------------------------|---|
| A. <i>Owner</i> | City of Norman, OK, and/or Norman Utilities Authority and/or Norman Municipal Authority as it applies to the specific project for which services are rendered. |
| B. <i>Engineer</i> | The officer or/agent of the Owner in charge of overseeing the specific project for which services are be rendered. |
| C. <i>Term of Contract</i> | This Contract on an as-needed basis for a period of three (3) years with the option for two (2) contract renewals each with a period of one (1) year for a contract length of five (5) years or longer as needed to |

complete any work started during the contract term.

2. Basic Services. The Construction Testing Consultant is hereby engaged and employed by the City to perform in accordance with good construction testing practices and in the best interest of the Owner, and to provide all labor, tools, equipment and materials necessary to perform all the work as set out herein. The selected consultant(s) will perform construction testing activities during upcoming construction projects. The Consultant shall ensure all testing work is completed under the supervision of Oklahoma registered professional engineers and in accordance with the applicable ASTM, AASHTO, or ODOT standards and the requirements of the City of Norman.

A. The Consultant's scope of work is anticipated to include, but is not limited to, the following activities:

- 1) Coordinate and schedule testing activities with the Owner/design engineer to ensure the prime contractor is not delayed in the performance of the construction. Promptly communicate any problems anticipated or encountered.
- 2) Meet with staff for project discussions, coordination, and presentations as required.
- 3) Prior to initiation of the work, Consultant's employees will attend health and safety meetings if required by the Contractor.
- 4) Provide adequate materials, labor and equipment to perform the work in a timely manner.
- 5) A list of proposed testing services is included in **Attachment A**. The City may allow alternate test methodologies upon written approval. Submit, in a timely manner, two copies of testing results to City of Norman. Provide one additional copy to both the design engineer and prime contractor.
- 6) Results must be certified by an Oklahoma Registered Professional Engineer. Test reports must indicate whether the material tested meets (passes or fails) the Construction Specifications provided by the City of Norman.
- 7) Negotiated unit prices will include all costs of performing the laboratory testing work (labor, equipment, storage, etc.) and reporting in the unit price for each test. Charges other than the unit prices defined in the contract will not be accepted for payment. Unit prices defined in the contract will remain the same throughout the term of the agreement.
- 8) One mobilization per day, for all purchase orders combined, will be allowed, unless otherwise approved by the City's Project Manager in advance. Per diem, mileage, etc. must be included in the mobilization rate.
- 9) Hourly rates for professional engineer, project manager and field technician will be included. All costs of their services (labor, equipment, etc) will be included in the hourly rate. Unit prices defined in the contract will remain the same throughout the term of the agreement.

B. Changes in Work

- 1) In any case where the Construction Testing Consultant believes additional compensation and/or time is due for work and services not clearly covered by a project-specific work order, the Construction Testing Consultant shall promptly notify the Owner in writing of its intention to negotiate for such additional compensation and/or time. The Construction Testing Consultant shall give this

notice prior to exceeding work order compensation and/or time limits. If such notification is not given, no claim for such extra compensation and/or time will be considered. Such notice by the Construction Testing Consultant shall not in any way be construed as proving the validity of the claim. The claim must be approved by the Owner. In such case where the claim is found to be just, it shall be allowed and paid as Extra Work in accordance with the Compensation paragraph of this Contract and unit rates specifically identified therein.

- 2) Exhaustion of the administrative procedure outlined herein above is a prerequisite of and not a substitute for the right of judicial review of the dispute.
3. Work Order. A project-specific work order for each construction testing project will be provided to the Construction Testing Consultant by the Owner, with an estimated number of tests to be performed. The services of the Construction Testing Consultant are to commence upon the date set out in the work order and be completed in the number of mutually agreed upon number of calendar days. If the Construction Testing Consultant cannot perform the work and/or services within the time provided, and upon the submission by the Construction Testing Consultant of a request in writing to the Owner, indicating the length of extension required to perform a task, the Owner may grant a reasonable extension time. The request from the Construction Testing Consultant shall state the reason for the extension request, along with evidence showing that the Construction Testing Consultant is unable to complete this work in the time specified in the work order for reasons beyond its control. The Construction Testing Consultant is prohibited from claiming damages for delays and extensions of time.
4. No Extra Work. No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the Owner unless such work or service is first approved in writing by the Owner.
5. Compensation. Under the terms of this Contract, the Construction Testing Consultant agrees to perform the work described in the Basic Services scope of work, and the Owner agrees to pay the Construction Testing Consultant as compensation for professional services described therein at the unit rates included in Attachment A.
6. Payments.
 - A. Invoices shall be submitted monthly. The Consultant will submit an itemized invoice for Purchase Orders individually, no more frequently than monthly, to the requesting Project Manager, and the Owner will pay the Consultant based on the work completed that period. Payment will be based on the unit prices negotiated with the Consultant. Invoices shall state actual tests performed or actual time expended on services performed by the Construction Testing Consultant and shall meet the standards of quality as established under this Contract. The Owner agrees to pay the Construction Testing Consultant, as compensation for such testing services as listed herein in accordance with the unit rate schedule outlined in Attachment A to this Contract. Invoices shall be prepared and submitted by the Construction Testing Consultant and be accompanied by all supporting data required by the Owner. Payment of any invoice for any work or services may not be deemed to be recognition of satisfactory

performance of said work or services or a waiver of any right of the Owner or any obligation of the Construction Testing Consultant should it be determined later that said work or services were negligently performed or provided or were not performed or provided in accordance with the standards required by this Contract.

- B. Claims over \$12,500 require an Invoice Affidavit in accordance with state law. The Owner will review the invoice for payment. Should the Owner question or request additional documentation or disapprove all or a portion of any invoice, the Construction Testing Consultant will be notified so that it may provide additional documentation sufficient to permit the invoice to be paid, in whole or in part.

7. Indemnity. To the fullest extent permitted by law, the Construction Testing Consultant agrees to release, defend, indemnify and save harmless the Owner, their officers, agents and employees, from and against any and all loss of damage to property, injuries to or death of any person or persons and/or all claims, damages, suits, cost, expenses, liability, actions or proceedings of any kind or nature whatsoever, including, without limitation, Worker's Compensation claims of or by anyone whomever, in any way resulting from or arising out of the Construction Testing Consultant's negligent acts, operations, errors and/or omissions under or in connection with this Contract, or the Construction Testing Consultant's negligent use and occupancy of any portion of the project site, including, without limitation, negligent acts, operations, errors and/or omissions of the Construction Testing Consultant's officers, employees, representatives, suppliers, invitees, contractors, subcontractors or agents. The Construction Testing Consultant shall promptly advise the Owner in writing, of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and the Construction Testing Consultant, at its expense, shall assume the defense of the Owner, with counsel satisfactory to the Owner. This section shall survive the expiration of the Contract. Provided, however, the Construction Testing Consultant needs not release, defend, indemnify or save harmless the Owner and or their officers, agents and employees, from damages or injuries resulting from the negligence of the Owner, their officers, agents or employees. It is understood that this indemnity and hold harmless provision is not limited by the insurance required under the provisions thereof.
8. Insurance. Required insurance shall be carried and maintained throughout the term of this Contract, and certificates of insurance shall contain a provision by the insurer(s) to the effect that the policy(s) may not be canceled, fail to be renewed, nor the limits decreased by endorsement without thirty (30) days prior written notice to the Owner and any participating public trust.
 - A. During the term of the Contract, the Construction Testing Consultant shall provide, pay for, and maintain with companies satisfactory to the Owner and any participating public trust, the types of insurance described herein. All insurance shall be from responsible insurance companies eligible to do business in the State of Oklahoma. All liability policies (except professional liability policies) shall provide that the Owner and any participating public trust are named additional insured as to the operations of the Construction Testing Consultant under this Contract and shall also provide the following Severability of Interest Provision:

“With respect to claims involving any insured hereunder, except with respect to limits of insurance, each such interest shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.”

- B. Promptly after notice of award of this Contract, the insurance coverage and limits required must be evidenced by properly executed Certificates of Insurance on the forms acceptable to the Owner. The certificate must be signed by the authorized representative of the insurance company(s) shown in the certificate with proof that he/she is an authorized representative thereof. In addition, certified, true and exact copies of all insurance policies required shall be provided to the Owner. The required policies of insurance shall be performable in Norman, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.
- C. No less than thirty (30) days prior written notice by registered or certified mail shall be given to the Owner of any cancellation, intent not to renew, or reduction in the policies' coverage except in the application of the aggregate limits provisions. In the event of a reduction in any aggregate limit, the Construction Testing Consultant shall immediately notify the Owner and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the Owner requests a written statement from the insurance company(s) as to any impairments to the aggregate limit, the Construction Testing Consultant hereby agrees to promptly authorize and have delivered to the Owner such statement. The Construction Testing Consultant authorizes the Owner to confirm all information so furnished as to the Construction Testing Consultant's compliance with its bonds and insurance requirements, the Construction Testing Consultant's insurance agents, brokers, surety and insurance carriers. All insurance coverage of the Construction Testing Consultant shall be primary to any insurance or self-insurance program carried by the Owner.
- D. No work or occupancy of the premises shall commence at the site unless and until the required certificates of insurance are provided and in effect and the written notice to proceed is issued to the Construction Testing Consultant by the Owner.
- E. The insurance coverage and limits required of the Construction Testing Consultant under this Contract are designed to meet the minimum requirements of the Owner. Such coverage and limits are not designed as a recommended insurance program for the Construction Testing Consultant. The Construction Testing Consultant alone shall be responsible for the sufficiency of its own insurance program. Should the Construction Testing Consultant have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, the Construction Testing Consultant should seek professional assistance.
- F. The Construction Testing Consultant shall provide the Owner the following insurance:
 - (1) Worker's compensation and employer's liability. The Construction Testing Consultant shall maintain, during the term of the Contract, worker's compensation insurance as prescribed by the laws of the State of Oklahoma and employer's liability insurance in an amount not less than One Hundred

Thousand Dollars (\$100,000.00) each for all its employees employed at the site of the project, and in case any work is subcontracted, the Construction Testing Consultant shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Construction Testing Consultant. In the event any class of employees engaged in work performed under the Contract or at the site of the project is not protected under such insurance heretofore mentioned, the Construction Testing Consultant shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.

- (2) Commercial general liability insurance. The Construction Testing Consultant shall maintain during the term of the Contract sufficient commercial general liability insurance to protect the Construction Testing Consultant and any additional insured(s) from claims for bodily injury, including death, as well as from claims from property damages or loss, which may arise from activities, omissions and operations under the Contract, whether such activities, omissions and operations be by the Construction Testing Consultant or by any subcontractor or by anyone directly or indirectly employed by or acting on behalf of or to the benefit of them. The amounts of such insurance shall be not less than the Owner's maximum liability under the Government Tort Claims Act, 51 O.S. § 151 et seq., as amended from time to time and currently are:
- a. Property damage liability in an amount not less than Twenty-Five Thousand Dollars (\$25,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.
 - b. All other liability in an amount of not less than One Hundred Twenty Five Thousand Dollars (\$125,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.
 - c. Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

Note: If commercial general liability coverage is written in a "claims-made" form, the Construction Testing Consultant shall also provide tail coverage that extends a minimum of one year from the expiration of this Contract.

- (3) Automobile liability insurance shall be maintained by the Construction Testing Consultant as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles, with limits of not less than:

Bodily injury liability	\$125,000.00	Limit each person
	\$1,000,000.00	Limit each accident
Property damage liability	\$25,000.00	Limit each accident
	or	
Bodily injury and Property damage	\$1,000,000.00	Combined single limit each accident

- (4) Valuable paper insurance in an amount not less than \$25,000.00 to assure the restoration, in the event of their loss or destruction, of any field notes, drawings, documents, summaries, estimates, reports, specifications, data, as-built drawings, renderings, calculations, tracings, computer files, models or plans (hereinafter collectively referred to as "documents") obtained or prepared as a part of this Contract and the delivery of said documents to the Owner upon completion, expiration, cancellation or termination of this Contract. The Owner is to be named as loss payee for its interest only.
- (5) Professional liability insurance. Before this Contract may become effective, the Construction Testing Consultant shall provide the Owner with a certificate of insurance evidencing the Construction Testing Consultant's coverage under a Professional Liability Insurance Policy in an amount not less than \$125,000.00 aggregate annual limit of liability. Such insurance shall be maintained for a period of two (2) years after the completion of construction of any project where services are rendered under this contract.
- (6) Any lapse of insurance coverage is declared a breach of this Contract. The Owner may, at its option, suspend this Contract until there is full compliance with this paragraph "Insurance" or terminate this Contract for nonperformance.
9. Guarantees of Work. It is possible that more than one consultant will be selected to perform testing services. This Contract will not be a guarantee of work. A different consultant may be used for a specific project if it is deemed to be in the Owner's best interest.
10. Notices. All notices given pursuant to this Contract shall be in writing, delivered or mailed by United States mail, postage prepaid or faxed (with hard copy follow up by mail or delivery) and addressed as follows:

To the Owner:

The City of Norman
225 N. Webster Ave.
P.O. Box 370
Norman, Oklahoma 73069

Address shall include specific Attn: to the Department and person representing the Owner as overseeing the specific Owner project for which services are being rendered,

telephone numbers and FAX number shall also be to the specific department and person for which services are being rendered.

To the Construction Testing Consultant:
Benchmark Construction Services, LLC
3430 Macdonnell Dr, Norman, OK 73069
Attn: Jeriah Orth, Phone: (405)701-9935

The address of any person or party may be changed by notice to the other party, given in the manner described above. All such notices shall be deemed received when delivered.

11. Stop Work. Upon notice to the Construction Testing Consultant, the Owner may issue a stop work order suspending the performance of work and/or services under this Contract. The stop work order shall not terminate or suspended any of the required provisions of paragraph 7, "Indemnity" and/or 8, "Insurance" of this Contract. In the event the Owner issues a stop work order to the Construction Testing Consultant, the Owner will provide a copy of such stop work order to the contractor.
12. Compliance with Laws, Ordinances, Specifications and Regulations. The Construction Testing Consultant shall comply with all existing federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the work and/or services provided by this Contract.
13. Records and Accounts. During the term of this Contract and continuing for a period the longer of 1) five (5) years after the final acceptance of the last completed project under this Contract by the Owner, or 2) until the final resolution of any outstanding disputes between the Owner and the Construction Testing Consultant or the contractor(s) on the project, the Construction Testing Consultant shall maintain: all documents, notes, drawings, specifications, reports, estimates, summaries, renderings, models, photograph, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract that have not been submitted to the Owner subsequent to final completion of the project and its internal accounting records, and other supporting documents pertaining to the claims and/or invoices for costs of work and/or services of this Contract.

The Construction Testing Consultant must maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Construction Testing Consultant shall permit periodic audits by the Owner and the Owner's authorized representative. The periodic audit of the records in support of claims and invoices for the Contract shall be performed at times and places mutually agreed upon by the Owner and Construction Testing Consultant. Agreement as to the time and place for audits may not be unreasonable withheld.

14. Reporting to the Owner. The Construction Testing Consultant shall report to the Owner on a regular monthly basis and on an as needed basis.
15. Prohibition Against Collusion. The Construction Testing Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely

for the Construction Testing Consultant to solicit or secure this Contract. The Construction Testing Consultant further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Construction Testing Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

16. Ownership of Documents. All documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, surveys results, plans and any other materials produced, created or accumulated in performing this Contract, are and shall remain the property of the Owner and may be reproduced, distributed and published in whole or part without permission or any additional payments or fees to the Construction Testing Consultant. Reuse of said documents by the Owner shall be at the Owner's risk and responsibility and not that of the Construction Testing Consultant. The parties may use any portions of said documents at their own risk and responsibility.
17. Standard of Care. In providing the work and services herein, the Construction Testing Consultant shall maintain during the course of this Contract the standard of reasonable care, skill, diligence and professional competency for such work and/or services. The Construction Testing Consultant agrees to require all of its consultants, by the terms of its consultant's contracts, to provide services at the same standards of reasonable care, skill, diligence and professional competence required of the Construction Testing Consultant.
18. Subconsultants. The Construction Testing Consultant agrees to submit for approval by the Owner, prior to their engagement, a list of any subconsultants or subcontractors the Construction Testing Consultant intends to engage to perform work and/or services related to this Contract. Such approval will not be unreasonable withheld. The Construction Testing Consultant shall notify the Owner and seek pre-approval of any substitutions or changes in subconsultants or subcontractors.
19. Non-discrimination. In connection with the performance of work and/or services under this Contract the Construction Testing Consultant agrees as follows:
 - A. The Construction Testing Consultant agrees that it, or any of its subcontractors, will not discriminate against any persons on the basis of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex.
 - B. In the event of the Construction Testing Consultant's noncompliance with this nondiscrimination clause, this Contract may be suspended, canceled or terminated by the Owner. The Construction Testing Consultant may be declared by the Owner ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by the Construction Testing Consultant.
 - C. The Construction Testing Consultant agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Contract.

20. Assignment. Inasmuch as this Contract is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the Construction Testing Consultant to provide professional and personal services to the Owner, the parties agree that the Construction Testing Consultant may not assign its obligations, rights or interest in this Contract except as set forth in paragraph 21, "Termination for Default" subparagraph B.
21. Termination for Default. Either party may cancel this Contract in whole or in part, for failure of the other party to fulfill or promptly fulfill its obligations under this Contract, as follows:
 - A. After due notice of the default and thirty (30) days within which to correct the default, this Contract may be terminated by either party for default upon fourteen (14) days written notice should the other party fail substantially to perform in accordance with the Contract terms through no fault of the party initiating the termination.
 - B. If this Contract is terminated by reason of a default of the Construction Testing Consultant prior to the completion of this project, regardless of the reason for said termination, the Construction Testing Consultant shall immediately assign to the Owner any contracts and/or agreements relative to this project entered into between the Construction Testing Consultant and its subcontractors and subconsultants, as the Owner may designate in writing and with the consent of the subcontractors and subconsultants so designated. With respect to those contracts and/or agreements assigned to and accepted by the Owner, the Owner shall only be required to compensate such subcontractors and subconsultants for compensation accruing to such parties under the terms of their agreements with the Construction Testing Consultant from and after the date of such assignment to and acceptance by the Owner. All sums claimed by such Construction Testing Consultant to be due and owing for services performed prior to such assignment and acceptance by the Owner shall constitute a debt between the Construction Testing Consultant and affected subcontractors and subconsultants, and the Owner shall in no way be deemed liable for such sums. The Construction Testing Consultant shall include this provision and the Owner's rights and obligations hereunder in all agreements or contract entered into with the Construction Testing Consultant's subcontractors and subconsultants.
 - C. Termination herein shall not terminate or suspend any of the required provisions of the paragraph 7, "Indemnity" or 8, "Insurance" of this Contract.
22. Termination for Convenience. The Owner may terminate this Contract, in whole or in part, for the Owner's convenience. The Owner may terminate by delivery of a notice to the Construction Testing Consultant, pursuant to paragraph "Notices" herein.
 - A. Upon receipt of the notice of termination, the Construction Testing Consultant shall: (1) immediately discontinue all work and services affected, unless the notice directs otherwise; and (2) upon payment for work performed, deliver to the Owner all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated in performing this Contract, whether complete or incomplete, unless the notice directs otherwise.

- B. Upon termination for the convenience by the Owner, the Owner shall pay the Construction Testing Consultant for all work and services rendered, up to the time of the notice of termination, in accordance with the terms, limits and conditions of this Contract and as further limited by the not-to-exceed amounts set out in this Contract.
 - C. The rights and remedies of the Owner provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.
 - D. Termination herein shall not terminate or suspend any of the required provisions of paragraph 7, "Indemnity" or 8, "Insurance" of this Contract
23. Time Is of the Essence. Both the Owner and the Construction Testing Consultant expressly agree that time is of the essence with respect to this Contract, and the time for performance of each task established by the work orders shall be made a part of this Contract and shall be strictly observed and enforced. Any failure on the part of the Owner to timely object to the time of performance shall not waive any right of the Owner to object at a later time.
24. No Damage for Delay. No payment, compensation or adjustment of any kind (other than an approved extension time) shall be made to the Construction Testing Consultant for damages because of hindrances or delays from any cause in the progress of the work, whether such hindrances or delays be avoidable or unavoidable. The Construction Testing Consultant agrees that it will make no claim for compensation or damages for any such delays and will accept as full satisfaction for such delays the extensions of time.
25. Local Business Utilization Report. The Construction Testing Consultant agrees to submit a Local Business Utilization ("LBU") Report to the Owner upon request within fourteen (14) days from the date of this Contract, to include the following information:
- A. A list identifying each of its subcontractors and subconsultants;
 - B. The location of the principal of business of each subconsultant or subcontractor;
 - C. The status of each subconsultant or subcontractor as local, small, disadvantaged, minority or otherwise;
 - D. The general scope of work to be performed by each subconsultant or subcontractor; and
 - E. The dollar amount of each subcontract.
26. Severability. If any provision of this Contract is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
27. Entire Agreement. This Contract, including its Exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of the Owner and the Construction Testing Consultant concerning the Contract. Neither the Owner nor the Construction Testing Consultant has made or shall be bound by any agreement or any representation to the other concerning this Contract which is not expressly set forth herein.

28. Amendment. This Contract may be modified only by a written amendment of subsequent date hereto approved by the Owner and the Construction Testing Consultant's scope of work is increased or changed so as to materially increase the need for right-of-way acquisition services in excess of the not-to-exceed total compensation, the Construction Testing Consultant may seek to amend this Contract.
29. Execution in Counterparts. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
30. Descriptive Headings. The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Contract.
31. Construction and Enforcement. This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.
32. Survival of Representations. All representations and covenants of the parties shall survive the expiration of the Contract.
33. Parties Bound. This Contract shall be binding upon and inure to the benefit of all parties. This Contract is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.
34. Governing Law; Venue. This Contract shall be governed and construed in accordance with the laws of the United States of America and the State of Oklahoma. The venue for any action under this Contract shall be in the District Court of Cleveland County, Oklahoma or the United States District Court for the Western District of Oklahoma. The parties agree to submit to the subject matter and personal jurisdiction of said court.
35. Effective Date. The effective date of this Contract shall be the date of execution of this Contract by the Owner.
36. Renewal. Unless written notification of termination or renegotiations of any or all portions of this Contract, including unit costs, is given by the Owner or the Construction Testing Consultant at least sixty (60) days prior to the expiration date of this Contract, the contract shall be renewed and provisions thereof shall continue in full force and effect for a twelve (12) month period, with automatic renewal to apply to each successive twelve month period thereafter, not to exceed the contract term described in paragraph 1, "Definitions" Subparagraph C. At each renewal, unit prices will be adjusted by Consumer Price Index for the preceding twelve (12) months. To this end, no provision of this Contract, or of any such aforementioned document shall be interpreted or given legal effect to create an obligation on the part of the Owner to third persons, including, by way of illustration, but not exclusion, sureties upon performance bond, payment bonds, or other bonds, assignees of the Construction Testing Consultant, subcontractors, and persons performing labor, furnishing material or in any way contributing or assisting in the performance of obligations by the

Construction Testing Consultant; nor shall any provisions be interpreted or given legal effect to afford a defense against any obligation owed or assumed by such third person to the Owner or in any way to restrict the freedom of the Owner to exercise full discretion in its dealings with the Construction Testing Consultant.

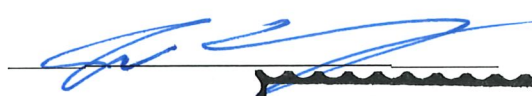
[Signatures on following page]

In Witness Whereof, this Contract was approved and executed by all parties hereto this 6th day of February, 2024.

CONSULTANT: Benchmark Construction Services, LLC


By: Jeriah Orth
Title: Managing Member

ATTEST:


JAY HENRY
Notary Public - State of Oklahoma
Commission Number 20007779
My Commission Expires Jun 27, 2024

CITY OF NORMAN/NORMAN UTILITIES AUTHORITY/NORMAN MUNICIPAL
AUTHORITY (Owner):

Approved as to form and legality this _____ day of _____, 2024.

City Attorney

Approved by the Council of the City of Norman, this _____ day of _____, 2024.

ATTEST:

City Clerk

Mayor/Chairman

ATTACHMENT A
TESTING WORK SCOPE and FEE SCHEDULE

I.	Mobilization (Technician – see Sec VIII for soil sampling mobe)	Per Trip	\$61.67
II.	Aggregate Testing		
A.	<u>Concrete Coarse Aggregates</u>		
1.	Abrasion, Los Angeles, AASHTO T96-77 (Including preparation of sample from crushed material)	Per Test	\$266.25
2.	Specific Gravity and Absorption, AASHTO T85 or ASTM C127	Per Test	\$98.33
3.	Sodium or Magnesium Sulfate ASTM C88 or AASHTO T104	Per Test	\$251.92
a.	Per Additional Cycle	Per Cycle	\$60.50
b.	Plus preparation of Sample From Crushed Material	Per Sample	\$116.67
4.	Freeze Thaw Soundness Tests (5 Cycles) AASHTO T103	Per Test	\$292.88
a.	Per Additional Cycle	Per Cycle	\$45.75
b.	Plus preparation of Sample From Crushed Material	Per Sample	\$57.50
5.	Sieve Analysis (Includes 200 sieve ASTM C-136 and C-117)	Per Test	\$98.33
6.	Specific Gravity and Absorption AASHTO T85 or ASTM C127	Per Test	\$98.33
B.	<u>Concrete Fine Aggregates</u>		
1.	Sieve Analysis (Includes 200 sieve) ASTM C-136 and C-117	Per Test	\$85.00
2.	Fineness Modulus (Calculation Only)	Per Test	\$20.56
3.	Soundness, Sodium or Magnesium ASTM C88 or AASHTO T104		
	Sulfate (1 to 5 Cycles)	Per Test	\$252.50
a.	Additional Cycles over 5	Per Cycle	\$63.75
b.	Plus Preparation of Sample From Crushed Material	Per Cycle	\$85.00
4.	Specific Gravity	Per Test	\$108.75
5.	Absorption	Per Test	\$87.50
C.	<u>Miscellaneous Aggregates</u>		
	Unit prices will correspond to those prices listed under Concrete Aggregates.		
III.	Asphalt Concrete and Hot Sand Asphalt Base		
A.	Cutting cores, 8" thickness or less AASHTO T168		
1.	1 to 3 Cores	Per Core	\$68.25
2.	4 to More	Per Core	\$58.75
3.	Each Additional Inch over 8"	Per Inch	\$7.56
4.	9-point length measurement of core	Per Core	\$31.75
5.	Patching Core Hole (if required)	Per Hole	\$21.19
B.	Extraction and Gradation OHD L-26, AASHTO T308 & T30		
1.	Ignition Oven Method	Per Test	\$229.00
C.	Asphalt Field Density Test OHD L-14, AASHTO T166		
1.	Cut-Out Method (Set of 3 cores)	Per set	\$143.83
2.	Nuclear Moisture/Density Gauge (2 Test Minimum) ***		
a.	2 Test Minimum, Per Trip	Per Test	\$55.75
b.	3 or More Tests, Per Trip	Per Test	\$45.00

D.	Marshall Stability (3 Samples per Set, Includes Sample Pick-Up)	Per Set	\$266.83
E.	HVEEM (3 Samples per Set, Includes Sample Pick-Up)	Per Set	\$184.33
F.	Sand Equivalent	Per Test	\$97.50
G.	Specific Gravity (Rice Method)	Per Test	\$115.67
H.	Retained Strength (Mix Design)	Per Test	\$565.00
I.	Superpave Gyratory Compactor, AASHTO T312 (2 Samples per set, Includes Sample Pick Up)	Per Test	\$200.67
IV.	Base Course Testing		
A.	Abrasion, Los Angeles, AASHTO T96-77 (Including preparation of sample from crushed material)	Per Test	\$266.25
B.	Field Density Test AASHTO T-310		
	1. Nuclear Moisture/Density Gauge (2 Test Minimum) ***		
	a. 2 Test Minimum, Per Trip	Per Test	\$55.00
	b. 3 or More Tests, Per Trip	Per Test	\$49.50
C.	Atterberg Limits (LL, PL, and PI)	Per Test	\$81.50
D.	Proctor Test, ASTM D-698 or AASHTO T-99 (Standard Method)		
	1. Method "A" to include sampling	Per Test	\$256.25
	2. Method "B" to include sampling	Per Test	\$256.25
	3. Method "C" to include sampling	Per Test	\$265.00
E.	Proctor Test, ASTM D-1557 or AASHTO T-180 (Modified Method)		
	3. Method "D" to include sampling	Per Test	\$277.06
F.	Sieve Analysis (Includes 200 sieve) AASHTO T-27	Per Test	\$99.13
V.	Concrete		
A.	Concrete Beams, Furnishing Molds, Making Beams, Measuring Slump, Air Entrain and Transporting (number based on project-specific requirements) Beams (3 or more)	Per Set	\$145.00
	Additional Beams	Per trip	\$38.94
B.	Concrete Beams, Storing and Testing	Per Beam	\$38.25
C.	Cores, 8 Inch Thickness or Less		
	1. Each additional inch over 8 inches	Per Inch	\$9.25
	2. One Core	Per Core	\$103.19
	3. Two or More Cores	Per Core	\$71.31
	4. 9-point length measurement of core	Per Core	\$38.00
	5. Patching Core Hole (if required)	Per Hole	\$19.56
D.	Concrete Cylinder, Making, Furnishing Molds and transporting; shall also include Air Entertainment and Slump Test		
	1. Four 6"x12" Cylinders	Per Cylinder	\$32.00
	2. Five 4"x8" Cylinders	Per Cylinder	\$25.40
E.	Concrete Cylinder, Storing and Testing		
	1. 6"x12" cylinder	Per Cylinder	\$19.50
	2. 4"x8" cylinder	Per Cylinder	\$17.25
Note: Payment for pick up of cylinders outside normal working hours or for unusual circumstances will be made when prior authorization is obtained from the City Engineer; however, cylinders made on Friday, which require pick up on Saturdays or Sundays, are assumed to have prior authorization from the City Engineer. (See testing item XV.C. for specific rate to be claimed for "additional compensation" outside normal duty hours.)			
F.	Compressive Strength, Concrete Cores (4" min diameter)	Each	\$31.13
G.	Trim Concrete Cores for Compressive Strength Testing:		
	1. One end		\$17.75

	2. Both ends		\$22.08
I.	Concrete Laboratory Trial Batch, Including 4 Test Cylinders	Per Design	\$826.67
	1. Slump additional test	Per Test	\$32.88
	2. Air entertainment additional test	Per Test	\$41.44
J.	Flowable Fill (Cement Grout)	Per Cylinder	\$41.88
K.	Flowable Fill (Set of 3 cylinders plus flow test)	Per Test	\$88.75
L.	Mortar Compressive Strength Testing (Set of 3 cubes)	Per Test	\$106.19
M.	Grout Compressive Strength Testing (Set of 3 prisms)	Per Test	\$117.13

Note: Casting of Beams and Cylinders to include slump and air content when required

VI. Metallic Materials

A.	Billet Steel Bars for Concrete Reinforcement Bend and Tensile Test	Per Test	\$200.00
B.	Structural Steel		
	1. Shop Inspection (only) (AWS/CWI)#1	Per Hour	\$104.50
	2. Field Inspection (AWS/CWI)#1	Per Hour	\$108.00
	3. Ultrasonic (Man/Equipment)	Per Hour	\$114.50
	4. Mag or Penetrant (Inspector)	Per Hour	\$112.00
	5. Shear Stud Bend Test	Per Hour	\$98.25
	6. Turn-of-Nut Tightening Test	Per Hour	\$98.25

VII. Pipe Inspection

A.	Concrete Pipe Inspection, Any Size	Per Hour	\$115.75
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VIII. Soil Testing

A.	California Bearing Ratio, ASTM D1883	Per Test	\$318.75
B.	Classification		
	1. ASTM 2488 and OSI	Per Sample	\$156.75
	2. ASTM 2487 Visual	Per Hour	\$98.44
C.	Field Density Test		
	1. Sand Cone Densimeter Test	Per Test	\$101.67
	2. Nuclear Moisture/Density Gauge (2 Test Minimum) ***		
	a. 2 Test Minimum, Per Trip	Per Test	\$55.00
	b. 3 or More Tests, Per Trip	Per Test	\$49.50

***All Nuclear Moisture/Density Gauges used under the control or direction of the City shall be inspected daily to ensure the device is within the manufacturer's specified tolerances for moisture and density calibrations and that each gauge be calibrated and certified in accordance with the provisions of ASTM and AASHTO. Nuclear Moisture/Density Gauges are to be inspected, calibrated and certified yearly by the manufacturer or an approved independent certification service. Said certification is to be accompanied by the operating technician's certification and the laboratory's NRC license and delivered to the City Engineer. In addition, a semiannual report shall be provided by the Testing Engineer showing calibrations and any adjustments made.

D.	Field Soil Resistivity (To include 3 locations)	Per Test	\$205.00
	1. Each additional location over 3 locations	Per Sample	\$65.38
	2. Laboratory Soil Resistivity Test	Per Test	\$91.50
E.	pH Test	Per Test	\$48.58
F.	Electro-conductivity Test	Per Test	\$110.00
G.	Atterberg Limits (LL, PL, and PI)	Per Test	\$88.00
H.	Proctor Tests (See listing under Base Course)	Per Test	\$257.50
I.	Moisture determination only	Per Test	\$15.31
J.	Volumetric Density	Per Test	\$33.63
K.	Test Borings, Soil Bearing Tests	Per Test	\$10.75

1.	Test Boring, Soil	Per Foot	\$15.88
2.	Test Boring, Sandstone, Limestone or Shale	Per Foot	\$30.06
3.	Coring Sandstone, Limestone or Shale	Per Foot	\$59.25
4.	Penetration Tests	Per Test	\$33.08
5.	Mobilization Charge		\$50.00
6.	Soil Boring Grouting (including preparation and submittal of well boring logs) in Accordance with Oklahoma Water Resources Board Regulations	Per Project	\$85.00
		Plus \$3.00/foot of grouted length	
L.	Unconfined Compressive Strength	Per Sample	\$78.75
M.	Soil-Cement Stabilized Base Field Density	Per Sample	\$51.42
N.	Soil-Lime Stabilized Base Field Density	Per Sample	\$51.42
O.	One-dimensional Swell Test, Potential Vertical Rise (PVR), ASTM 4546 Method B	Per Test	\$398.19
P.	Consolidation, ASTM D2435	Per Test	\$481.25
Q.	Permeability	Per Test	\$361.25
R.	Sampling (Shelby Tube samples)	Per Test	\$39.50
S.	Pressure Meter Test (3 Test Minimum per Boring)	Per Test	\$956.67
T.	Sieve Analysis (includes 200 sieve)	Per Test	\$67.06
U.	Soluble Sulfate Testing (OHD L-49)	Per Test	\$51.67

IX. Soil Modified Base Course, Design

Sub-items A, B, and C each include Atterberg limits, sieve analysis, Proctor, and three strength tests on laboratory-molded, cured, and conditioned test specimens. Sub-item B also includes the test under sub-item D; lime pre-treatment requires both items C and D.

A.	Cement Required, P.C.A., Short Method Gradation and Compressive Strength	Per Design	\$687.50
B.	Soil-Lime, Lime Assoc. Method	Per Design	\$762.33
C.	pH Method	Per Design	\$287.42
D.	Available Ca(OH) ₂ (Rapid Sugar)	Per Test	\$225.00
E.	Fineness Test (Sieve Analysis)	Per Test	\$85.25
F.	Pulverization Test (Cement or Lime Modified Soil)	Per Test	\$100.00
G.	Soil-Fly Ash or soil-CKD, CBR Method	Per Test	\$961.67

X. Foundation Report

Shall include information requested by the Architect or Engineer, including recommendation of loading of foundation material. Six (6) copies of the report shall be furnished at a rate to be paid for by the following:

Professional Engineer:	Per Hour	\$130.00
Staff Engineer:	Per Hour	\$140.00
Senior Engineer:	Per Hour	\$200.00
Technician:	Per Hour	\$65.69

Field Sampling, drilling and laboratory tests required in connection with the report shall be paid for in accordance with the applicable provisions of this Contract.

XI. Pre-stressed Concrete Bridge Member

Complete Engineering Inspection, Testing and Reporting in accordance with the 1976 Edition Standard Specification for Highway Construction, Oklahoma State Highway Commission, "Section 503-Prestressed Concrete Bridge Members" and all subsequent Revisions.

Inspection:	Per Hour	\$90.50
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XII. Asbestos Inspection & Sampling

A.	Bulk Sampling		
1.	Field Inspector	Per Hour	\$91.50
2.	Analysis by Polarized Light Microscopy/Dispersing Staining	Per Sample	\$10.00
B.	Air Monitoring		
1.	Eight hour shift including ten samples Analyzed by Phase Contrast Microscopy (PCM)	Per Day	\$499.00
2.	Air Sample (NIOSH 7400 Method)(PCM)	Per Sample	\$10.00
3.	Transmission Electron Microscopy Analysis	Per Sample	\$125.00

XIII. Lead

A.	Bulk Sampling		
1.	Field Inspector	Per Hour	\$98.00
B.	Analysis Testing		
1.	Paint Sample (chip)	Per Sample	\$12.00
2.	Wipe Sample	Per Sample	\$14.00
3.	Soil Sample	Per Sample	\$14.00
4.	Air Sample	Per Sample	\$14.00

XIV. Asbestos Report

Report shall include information regarding asbestos presence. The report may include location, percentage, type, friability, and recommendations for abatement including encapsulation, removal or maintenance and operation program. Six (6) copies of the report shall be furnished at a rate to be paid as follows:

Certified Industrial Hygienist	Per Hour	\$210.00
Technician	Per Hour	\$100.00

XV. IBC Testing/Inspection

The Engineer shall provide testing/inspection services as authorized for such work as required by the IBC, Chapter 17, Section 1704 as follows:

Engineer	Per Hour	\$178.33
AWS Certified Welding Inspector	Per Hour	\$107.33
ICC Certified Inspector	Per Hour	\$105.00
(Current certification must accompany each test)		
Technician	Per Hour	\$71.08

XVI. Hourly Rates

A.	Resident Engineer	Per Hour	\$166.25
B.	Project Manager	Per Hour	\$130.75
C.	Technician	Per Hour	\$72.81

XVII. Hourly Rates

A.	Additional Compensation	Per Hour	x1.5 Multiplier
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