

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between The City of Norman (OWNER) and Tetra Tech, Inc. (CONSULTANT) for the following reasons:

1. The OWNER intends to update the existing Disaster Debris Management Plan; and,
2. The OWNER requires certain professional administrative, technical, and analytical services in connection with the PROJECT (the SERVICES); and,
3. The CONSULTANT is prepared to provide the SERVICES.

In consideration of the promises contained in this AGREEMENT, the OWNER and the CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this AGREEMENT shall be 19th day of January, 2022.

ARTICLE 2 - GOVERNING LAW

This AGREEMENT shall be governed by the laws of the State of Oklahoma and FEMA .

ARTICLE 3 - SCOPE OF SERVICES

The CONSULTANT shall provide the SERVICES described in **Attachment A, Scope of Services**.

ARTICLE 4 - SCHEDULE

The CONSULTANT shall exercise its reasonable efforts to perform the SERVICES described in **Attachment A, Scope of Services** according to the schedule set forth in **Attachment B, Project Schedule**.

ARTICLE 5 -COMPENSATION

The OWNER shall pay the CONSULTANT in accordance with **Attachment C, Compensation**. Invoices shall be due and payable upon receipt. The OWNER shall give prompt written notice of any disputed amount and shall pay the remaining amount.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

The OWNER shall be responsible for all matters described in **Attachment D, Owner's Responsibilities**. The OWNER hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by the OWNER to the CONSULTANT. If the OWNER does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to the CONSULTANT, the OWNER shall obtain a license or right to use, including the right to sublicense to the CONSULTANT. The OWNER hereby grants the CONSULTANT the right to use the intellectual property associated with plans, documents or other materials it owns or has the right to use for the limited purpose of performing the SERVICES. The OWNER represents that the CONSULTANT's use of such documents will not infringe upon any third parties' rights.

ARTICLE 7 - STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the SERVICES as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this AGREEMENT or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the SERVICES.

ARTICLE 8 -INDEMNIFICATION AND LIABILITY

Indemnification. To the extent permitted by law, including the Constitution of the State of Oklahoma, the CONSULTANT and the OWNER each hereby agree to defend, indemnify, and hold harmless the other party, its officers, servants, and employees, from and against any and all liability, loss, damage, cost, and expense (including attorneys' fees and accountants' fees) caused by an error, omission, or negligent act of the indemnifying party in the performance of SERVICES under this AGREEMENT. The CONSULTANT and the OWNER each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of any such claims. This indemnity is not limited except as provided by applicable Oklahoma law. 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 the OWNER at common law.

Survival. The terms and conditions of this ARTICLE shall survive completion of the SERVICES, or any termination of this Agreement.

ARTICLE 9 - INSURANCE

During the performance of the SERVICES under this Agreement, the CONSULTANT shall maintain the following insurance:

1. General Liability Workmen's Compensation and Auto Liability insurance in accordance with the Political Subdivision Tort Claims Act of the State of Oklahoma.
2. Adequate worker's compensation insurance coverage to comply with State laws and employer's liability coverage in the minimum amount of \$100,000.
3. Comprehensive general liability insurance coverage with a minimum of \$100,000 per person and \$300,000 per accident for bodily injury or death and \$100,000 for property damage.
4. Comprehensive automobile liability insurance coverage with a minimum of \$50,000 per person and \$300,000 per accident for bodily injury or death and \$100,000 for property damage.
5. Professional Liability (errors and omissions) Insurance Certificate providing a minimum of \$100,000 policy value.

The CONSULTANT shall, upon written request, furnish the OWNER certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to the OWNER. The OWNER shall require all project contractors to include the OWNER, the CONSULTANT, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as additional insureds on their General and Automobile Liability insurance policies, and to indemnify both the OWNER and the CONSULTANT, each to the same extent.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

The CONSULTANT shall not be responsible for; (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the PROJECT that are outside of CONSULTANT's reasonable control and/or the **Scope of Services** set forth in **Attachment A**; (b) the failure of any contractor, subcontractor, vendor, or other PROJECT participant, not under contract to or otherwise under the control of the CONSULTANT, to fulfill contractual responsibilities to the OWNER or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the CONSULTANT in **Attachment A, Scope of Services**. In the event the OWNER requests the CONSULTANT to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to the CONSULTANT for review at least 15 days prior to the requested date of execution. The CONSULTANT shall not be required to execute any certificates or documents that in any way would, in CONSULTANT's sole judgment; (a) increase the CONSULTANT's legal or contractual obligations or risks beyond the terms of this AGREEMENT; (b) require knowledge, services or responsibilities beyond the scope of this AGREEMENT; or (c) result in the CONSULTANT having to certify, guarantee or warrant the existence of conditions which existence the CONSULTANT cannot reasonably ascertain.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because the CONSULTANT 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, the CONSULTANT's opinion of probable costs and of project schedules shall be made on the basis of experience and qualifications as a practitioner of its profession. The CONSULTANT does not guarantee that proposals, bids, or actual project costs will not vary from the CONSULTANT's cost estimates or that actual schedules will not vary from the CONSULTANT's projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, plans, drawings, and specifications prepared by the CONSULTANT as deliverables pursuant to the **Attachment A, Scope of Services** are instruments of service in respect to the PROJECT. They are not intended or represented to be suitable for reuse by the OWNER or others on modifications or extensions of the PROJECT or on any other project. Any reuse without prior written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the OWNER's sole risk and without liability or legal exposure to the CONSULTANT. The OWNER shall indemnify and hold harmless the CONSULTANT and its sub consultants against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse. Any verification or

adaptation of documents will entitle the CONSULTANT to additional compensation at rates to be agreed upon by the OWNER and the CONSULTANT.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by the CONSULTANT and furnished to the OWNER as part of the SERVICES shall become the property of the OWNER; provided, however, that the CONSULTANT shall have the unrestricted right to their use. The CONSULTANT shall retain its copyright and ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the SERVICES shall remain the property of the CONSULTANT.

ARTICLE 14 - TERMINATION AND SUSPENSION

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; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. The OWNER may terminate or suspend performance of this AGREEMENT for the OWNER's convenience upon written notice to the CONSULTANT. The CONSULTANT shall terminate or suspend performance of the SERVICES on a schedule acceptable to the OWNER, and the OWNER shall pay the CONSULTANT for all the SERVICES performed. Upon restart of suspended SERVICES, an equitable adjustment shall be made to the CONSULTANT's compensation and the project schedule.

ARTICLE 15 - DELAY IN PERFORMANCE

Neither the OWNER nor the CONSULTANT shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this AGREEMENT, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or 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 the OWNER or the CONSULTANT under this AGREEMENT. The CONSULTANT shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall, within a reasonable time of 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 16 - NOTICES

Any notice required by this AGREEMENT shall be made in writing to the address specified below:

OWNER:

Joseph Hill
Streets Program Manager
City of Norman

P.O. Box 370
Norman, OK 73070
(405) 366-7274 Phone

CONSULTANT:

Tetra Tech, Inc.
Brian Rutherford, Project Manager
Simon Carlyle, Subject Matter Expert
525 Central Park Drive, Suite 403
Oklahoma City, Oklahoma 731051
1 (321) 441-8500

Nothing contained in this ARTICLE shall be construed to restrict the transmission of routine communications between representatives of the OWNER and the CONSULTANT.

ARTICLE 17 - DISPUTES

In the event of a dispute between the OWNER and the CONSULTANT arising out of or related to this AGREEMENT, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation. Should such negotiation or mediation fail to resolve the dispute, either party may pursue available legal remedies.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

The CONSULTANT hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations, including the City of Norman's policies and provisions. The CONSULTANT affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is the CONSULTANT's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. The CONSULTANT further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-1 00 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

ARTICLE 19 - WAIVER

A waiver by either the OWNER or the CONSULTANT 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 20 - 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 it 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 21 - INTEGRATION

This AGREEMENT, including **Attachments A, B, C and D** incorporated by this reference, represents the entire and integrated AGREEMENT between the OWNER and the CONSULTANT. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

The OWNER and the CONSULTANT each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this AGREEMENT and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this AGREEMENT.

ARTICLE 23 - ASSIGNMENT

Neither the OWNER nor the CONSULTANT shall assign any rights or duties under this AGREEMENT without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, the CONSULTANT may assign its rights to payment without the OWNER's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this AGREEMENT. Nothing contained in this ARTICLE shall prevent the CONSULTANT from engaging independent consultants, associates and subcontractors to assist in the performance of the SERVICES.

ARTICLE 24 - NO THIRD PARTY RIGHTS

The SERVICES provided for in this AGREEMENT are for the sole use and benefit of the OWNER and the CONSULTANT. Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than the OWNER and the CONSULTANT.

IN WITNESS WHEREOF, OWNER and Tetra Tech, Inc. have executed this AGREEMENT.

DATED this _____ day of _____, 2021.

The City of Norman
(OWNER)

Tetra Tech, Inc
(CONSULTANT)

Signature: _____

Signature: _____

Name: _____

Name: Jonathan Burgiel

Title: _____

Title: Business Unit President

Date: _____

Date: December 28, 2021

Attest:

Attest:

City Clerk

Contracts Administrator (Betty Kamara)

Approved as to form and legality this 7 day of Jan 2022

Christine Luckala
City Attorney

ATTACHMENT A SCOPE OF SERVICES

ARTICLE 3 of the AGREEMENT is amended and supplemented to include the following agreement of the parties. The CONSULTANT shall, except as otherwise provided for herein, furnish all engineering services, labor, equipment and incidentals (SERVICES) as required for this AGREEMENT.

Description of Project

The purpose of this project is to update the existing Disaster Debris Management Plan to ensure that it is compliant with all current federal, state, and local rules and regulations.

The City's current Disaster Debris Management Plan was completed in July 2009. The City approved the preparation of the Disaster Debris Management Plan to better respond to emergency debris removal situations. As a living document, this plan needs to be updated on a regular basis to ensure that it meets current guidelines and industry standards. During this process, all forms, reports, tracking procedures, and Debris Management sites should be reviewed to make certain the City of Norman has all necessary components in place to successfully complete its debris removal operations.

Task 1: Update Documents in Existing Plan

- Project kickoff call
- Half-day (up to four hours) meeting with City staff to perform interviews and gather documents necessary for the completion of all four tasks
- Update City policies and protocols that have changed since the development of the existing plans.
- Update roles, responsibilities as needed for City departments and other agencies with a role in response and recovery.
- Incorporate provisions to account for the use of an automated debris management system (ADMS) should the City choose not to use a paper-based ticketing system.
- Include changes regarding the Federal Emergency Management Agency (FEMA) Public Assistance Alternative Procedures (PAAP) Pilot Program.
- Include changes to the Public Assistance Program including updated guidance for the procurement contractor services to assist in the clearing, removal and monitoring of debris operations.
- Update potential debris estimates.
- Include lessons learned from City staff in strategies for debris clearing, removal and disposal.
- Update road clearance priorities
- Update authorities and references listed in the plan

Task 2: Develop Protocols for tracking Force Account labor and equipment and emergency procurement

- On-site or online meeting (up to four hours) with City finance staff in conjunction with the plan update meeting (task 1) to discuss force account labor and asset tracking protocols and emergency procurement procedures
- Collection of relevant asset management, time keeping and emergency procurement policy documents and incorporation into the City DDMP.

Task 3: Conduct DMS location viability services

- Review of previously identified DMS locations with City staff
- Survey three additional City-identified sites for potential use as DMS locations
- Update DMS report

Task 4: Final Plan development and submittal

- Compile data collected and produce draft of DDMP update
- Submit to the City for review, comments, and suggested changes
- Incorporate changes

**ATTACHMENT B
PROJECT SCHEDULE**

ARTICLE 4 of the AGREEMENT is amended and supplemented to include the following agreement of the parties.

It is understood and agreed that the date of beginning, rate of progress, and the time of completion of SERVICES under this AGREEMENT are essential provisions of this AGREEMENT. It is further understood and agreed that the SERVICES under this AGREEMENT shall commence upon execution of the AGREEMENT between the OWNER and the CONSULTANT and after receipt of a written Notice to Proceed from the CONSULTANT. The parties mutually agree that time is of the essence in the performance of this AGREEMENT in order for the OWNER to take advantage of existing funding. The CONSULTANT agrees to provide SERVICES for each phase of the PROJECT as stated in **Attachment A - Scope of Services**, in accordance with the time frame as stated below:

TASK MILESTONE	ANTICIPATED COMPLETION DATE
Notice to Proceed	January 19, 2022
Task 1: Update Documents in Existing Plan	March 18, 2022
Task 2: Develop protocols for tracking force account labor & equipment, and emergency procurement	April 15, 2022
Task 3: Conduct DMS location viability surveys	May 13, 2022
Task 4: Final Plan development and submittal	June 24, 2022

The parties further agree that the CONSULTANT will meet this schedule using standards and procedures for their submissions consistent with those currently used by Engineers/Surveyors practicing in Oklahoma. This schedule excludes the governing agency review time (except as provided above) and anytime lost while the CONSULTANT is waiting for direction either by a government agency or the OWNER, and any excusable delays as described in ARTICLE 15 of the AGREEMENT.

Dates indicated are dependent upon timely review by the OWNER, and other factors beyond direct control of the CONSULTANT.

ATTACHMENT C COMPENSATION

ARTICLE 5 of the AGREEMENT is amended and supplemented to include the following agreement of the parties.

The CONSULTANT agrees to perform the SERVICES identified in **Attachment A - Scope of Services**, in accordance with the limitations and conditions set forth in the AGREEMENT. The OWNER agrees, in accordance with the limitations and conditions set forth in the AGREEMENT to pay an amount not to exceed \$26,641.00 unless changed or modified by a mutually executed contact amendment between the OWNER and the CONSULTANT.

The OWNER shall pay the CONSULTANT for completion of the SERVICES of each task identified in **Attachment A - Scope of Services**, in accordance with the amounts stated below:

DESIGN TASK	COMPENSATION
Task 1 – Update documents in existing plan	\$9,434.00
Task 2 – Develop protocols for tracking force account labor & equipment and emergency purchasing	\$3,884.00
Task 3 – Conduct DMS location Viability Surveys	\$6,413.00
Task 4 – Final Plan development and submittal	\$6,910.00
TOTAL COMPENSATION	\$ 26,641.00

Payment claims or invoices for incremental work completed on each task may be submitted by the CONSULTANT to the OWNER for prompt payment on a monthly basis.

Final payment shall not be deemed to waive any rights or obligation of the OWNER or the CONSULTANT to this AGREEMENT.

**ATTACHMENT D
OWNER'S RESPONSIBILITIES**

ARTICLE 6 of the AGREEMENT is amended and supplemented to include the following agreement of the parties.

OWNER RESPONSIBILITIES

1. The OWNER shall furnish to the CONSULTANT all available information pertinent to PROJECT including previous reports, plans and any other data relative to the PROJECT.
2. The OWNER shall be responsible for all permit fees.
3. The OWNER shall examine all studies, reports, sketches, estimates specifications, plan drawings, proposals and any other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the SERVICES of the CONSULTANT.
4. The OWNER shall designate in writing a person to act as its representative in respect to the work to be performed under this AGREEMENT, and such person shall have complete authority to transmit instructions, receive information, interpret, and define the OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this AGREEMENT.
5. The OWNER shall furnish legal assistance as required in the preparation, review and approval of construction documents.
6. The OWNER shall provide for meeting facilities (or arrange for meeting facilities) for all PROJECT meetings with OWNER or Public Meetings in connection with the PROJECT.