

AGREEMENT
FOR
ENGINEERING SERVICES

This AGREEMENT, between the Norman Utilities Authority (OWNER) and Garver, LLC, (ENGINEER);

WITNESSETH

WHEREAS, OWNER intends to replace existing turbo blowers with new manufacturer-provided units and replace additional standard, centrifugal blowers;

WHEREAS, OWNER requires engineering services, bidding services, construction support services, instrumentation and control services, and as-built record document services more fully described in Attachment B (the SERVICES); and,

WHEREAS, ENGINEER is prepared to provide said SERVICES; and.

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 _____.

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), data generated by OWNER's water distribution system model and existing water quality data. 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. ENGINEER shall not assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any hazardous substance or waste.

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 ENGINEER 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 ENGINEER in the performance of services under this Agreement. OWNER agrees to defend, indemnify, and hold harmless the ENGINEER, 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 ENGINEER 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 ENGINEER 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 to the extent of the indemnities provided for in 8.2.

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 and security 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 material 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: Cole Niblett, P.E., Oklahoma Water Lead
Garver, LLC
750 SW 24th Street
Moore, OK 73160
405-928-7555
MCNiblett@GarverUSA.com

OWNER: Kenneth Giannone, Staff Engineer
City of Norman – Utilities Department
225 N Webster Avenue
P.O. Box 370
Norman OK 73069 / 73070
405-366-5377
kenneth.giannone@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 – NON-DISCRIMINATION

In connection with the performance of work under this contract, the ENGINEER agrees as follows:

- A. The ENGINEER agrees not to discriminate against any employee or applicant for employment because 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. The ENGINEER shall take affirmative action to ensure that employees are treated without regard to their 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. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The ENGINEER and any companies subcontracted shall agree to post in a conspicuous place, available to employees and applicants for employment, notices to be provided by the City Clerk of the City of Norman setting forth the provisions in this section.
- B. In the event of the ENGINEER's noncompliance with this nondiscrimination clause, the contract may be canceled or terminated by the City Council. The ENGINEER may be declared by the City Council ineligible for further contracts with the said agency until satisfactory proof of intent to comply shall be made by the ENGINEER.
- C. The ENGINEER agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this agreement.

ARTICLE 19 - 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 20 - 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, OWNER and ENGINEER have executed this AGREEMENT.

DATED this _____ day of _____ 20_____.

GARVER, LLC - ENGINEER

ATTEST

By:



Title:

Vice President



Project Manager

Norman Utilities Authority- OWNER

APPROVED as to form and legality this 3 day of August, 2023.



City Attorney

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

ATTEST

By:

Title:

ATTACHMENT A
SCHEDULE

Task Description	Calendar Days
Final (90%) Design Deliverable	30 days after Owner approval of Preliminary Design Deliverable
Bidding Phase Services	30 days from Owner Advertisement
Construction Phase Services	60 days from Construction Contract Notice to Proceed
Record Drawings	45 days from Construction Completion
Application Engineering	Ongoing during construction

ATTACHMENT B

SCOPE OF SERVICES

Task 1.0 – Project and Quality Management

Engineer will manage all services to complete the project. These services will include preparation of monthly invoices, progress updates, and directing staff and internal resources in a manner so that project milestones and deliverables are met as scheduled.

Engineer will provide quality management services for the project. The Engineer's quality management team will review project deliverables for adherence to schedule and quality expectations.

Task 2.0 – Design Phase Services

Garver will conduct final designs to prepare construction plans and specifications, for one construction contract, including final construction details, special provisions, and OPCC to include contingency. In addition to Garver's standard drawings and technical specifications, Owner's standard front-end documents will be prepared by Owner and utilized for the remainder of the bidding package. Owner or funding agency standard documents will be utilized as necessary.

Upon Owner review of the final design, Garver will conduct an onsite meeting with the Owner to review and discuss, incorporate Owner comments, and prepare the construction documents as required to advertise for bids. Because the replacement of the blowers will not be increasing the capacity nor original design intent of the system, the coordination and pursuit of an Oklahoma Department of Environmental Quality (ODEQ) Construction Permit is not included in this scope of services.

Task 3.0 – Bidding Phase Services

During the bidding phase of the project, Garver will:

1. Prepare and submit Advertisement for Bids to Owner for Owner publication in newspapers and/or trade publications. Owner will pay advertising costs outside of this contract.
2. Dispense construction contract documents to prospective bidders using Garver's online plan room. Electronic documents will be provided at no cost.
3. Support the contract documents by preparing addenda as appropriate.
4. Lead the pre-bid meeting.
5. Attend the bid opening.
6. Prepare bid tabulation.
7. Evaluate bids and recommend award, including attending a City Council meeting.

Task 4.0 – Construction Phase Services

Construction Administration services have been included in this scope of services. Construction Observation services are not anticipated to be necessary, but can be added by written amendment. The proposed fee for Construction Phase Services is based on a 60 calendar-day (2-month) construction contract performance time, assuming that construction will begin once the blowers are received from the Manufacturer. If the construction time extends beyond the time established in this agreement, and the Owner wants Garver to continue the applicable Construction Phase Services (Administration), the Owner will pay Garver an additional fee agreed to by the Owner and Garver. Garver will accomplish the following during the Construction Phase:

1. Issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting.
2. Attend monthly progress/coordination meetings (up to two) with the Owner/Contractor.
3. Evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by Garver on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will only be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating their work with that of all other trades, and performing their work in a safe and satisfactory manner. Garver's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, Garver shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
4. Issue instructions to the Contractor on behalf of the Owner and issue necessary clarifications (respond to RFIs) regarding the construction contract documents.
5. Review the Contractor's progress payment requests based on the actual quantities of contract items completed and accepted, and will make a recommendation to the Owner regarding payment. Garver's recommendation for payment shall not be a representation that Garver has made exhaustive or continuous inspections to (1) check the quality or exact quantities of the Work; (2) to review billings from Subcontractors and material suppliers to substantiate the Contractor's right to payment; or (3) to ascertain how the Contractor has used money previously paid to the Contractor.
6. Maintain a set of working drawings and prepare and furnish record drawings.
7. When authorized by the Owner, prepare change orders for changes in the work from that originally provided for in the construction contract documents. If redesign or substantial engineering or surveying is required in the preparation of these change order documents, the Owner will pay Garver an additional fee to be agreed upon by the Owner and Garver.
8. Participate in final project inspection, prepare punch list, review final project closing documents, and submit final pay request.

Task 5.0 – Application Engineering

The application engineering services for the WRF will provide updates to the Supervisory Control and Data Acquisition (SCADA) system human-machine interface (HMI) and programmable logic controller (PLC) applications as required for the integration of the new turbo and centrifugal blowers at the WRF as defined in the construction contract documents. The engineer will modify existing SCADA HMI graphic screens and PLC programming to integrate the new blowers into the SCADA system with monitoring, control, and software input/output interface features equivalent to the existing turbo blowers. Further, on-site startup support and coordination for SCADA HMI and PLC application commissioning, and post startup modifications or enhancements to the SCADA HMI and PLC applications will be provided for the aforementioned features to address improvements resulting from commissioning of the new blowers.

Project Deliverables: The following will be submitted to the Owner, or others as indicated, by the Engineer:

1. Electronic copies of all documents and deliverables
2. Three (3) copies of the Final Design Deliverable
3. Three (3) copies of the conformed contract documents for contract execution.
4. One (1) copy of the Record Drawings and closeout documents.

Extra Work: The following items are not included within the scope of this agreement but such services are available from Engineer and will be considered as extra work:

- a. Design services of any kind outside of those described in this Scope of Services
- b. Aeration piping improvements
- c. Change of scope for Owner's convenience or due to changed conditions after previous direction and/or approval
- d. Submittals or deliverables in addition to those listed herein.
- e. Construction materials testing.
- f. Geotechnical testing.
- g. Title II services.
- h. Construction observation services.
- i. Environmental Handling and Documentation.
- j. Aeration system or sub-system HMI and PLC application development, improvement, or enhancement.
- k. Hardware upgrades of computers, network devices, server software, HMI and PLC applications, aeration system or sub-system components.
- l. Troubleshooting beyond software interface between SCADA system and aeration system.
- m. Purchase or installation of software applications or licenses.
- n. Equipment replacement.

**ATTACHMENT C
COMPENSATION**

Task	Task Description	Compensation by Task
1	Project and Quality Management	\$8,000
2	Final (90%) Design Deliverable	\$42,850
3	Bidding Phase Services	\$4,000
4	Construction Phase Services	\$15,000
5	Application Engineering	\$18,000