

AGREEMENT FOR NON-POTABLE WATER SUPPLY SERVICES

This AGREEMENT, made and entered into the ____ day of _____, 2022, by and between the City of Norman, Oklahoma, (hereinafter jointly referred to as "CITY"), and the Board of Regents of the University of Oklahoma (hereinafter referred to as "UNIVERSITY");

WITNESSETH

WHEREAS, CITY and UNIVERSITY desire to establish a new agreement for the providing of water supply services (the SERVICES); and

WHEREAS, CITY owns and the Norman Utilities Authority operates the water distribution system for the City of Norman which conveys potable water to its customers; and

WHEREAS, UNIVERSITY owns and operates its own potable and non-potable water distribution systems which each respectively conveying either potable or non-potable water to its customers; and

WHEREAS, UNIVERSITY desires to supply non-potable water to CITY at a billing rate that will provide full cost recovery for the UNIVERSITY; and

WHEREAS, CITY is prepared to pay UNIVERSITY to provide said SERVICES, except as otherwise specifically excepted herein; and

NOW, THEREFORE, in consideration of the mutual promises contained in this AGREEMENT, CITY and UNIVERSITY agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this AGREEMENT shall be the ____ day of _____, 2022.

ARTICLE 2- GOVERNING LAW

The laws of the State of Oklahoma shall govern this AGREEMENT.

ARTICLE 3 - SERVICES TO BE PERFORMED BY UNIVERSITY

UNIVERSITY agrees to perform the SERVICES described below:

- 3.1. UNIVERSITY will operate and maintain its non-potable water distribution system to provide to CITY, at mutually agreed to metering locations, non-potable water at the rate set forth in Article 5.
- 3.2. Non-potable water from the UNIVERSITY shall originate from groundwater wells owned and operated by the UNIVERSITY.
- 3.3. UNIVERSITY will operate and maintain water-metering equipment to accurately measure the quantity of non-potable water provided to CITY by UNIVERSITY, such operation and maintenance to include ensuring that meters are read consistently so as not to cause CITY otherwise unnecessary charges.
- 3.4. UNIVERSITY will tie-in 6" header to existing non-potable water 12" piping and will operate and maintain the new 6" PVC line as part of its non-potable water distribution system upon successful hydrostatic testing.
- 3.5. UNIVERSITY agrees to allow CITY, at its expense, to check, test, audit, or otherwise verify the accuracy and calibration of UNIVERSITY meters. Provided

however that CITY shall not be unreasonable in the manner or frequency of such requests to do so.

- 3.6. UNIVERSITY will prepare accurate billing statements and deliver such statements to CITY no more frequently than monthly but at a minimum quarterly.

ARTICLE 4 - PARTIES RESPONSIBILITIES

CITY and UNIVERSITY agree to the following:

- 4.1. Both Parties will make their facilities accessible to the other Party as required for performance of SERVICES.
- 4.2. CITY will install 6" PVC, with tracer wire and installed per CITY standards, west from the existing UNIVERSITY non-potable water system 12" pipe along Flood Ave, heading west, almost to Mendel Place. The pipe will be installed nominally 4' deep, within the 40' temporary construction easement. A 6" plug with 2" blowoff will be included on far west end of line, allowing for air purge as needed.
- 4.3. CITY will install a service line and the UNIVERSITY specified water-metering equipment and appurtenances just outside fence by tee off for wash station, to accurately measure the quantity of water provided to the CITY. UNIVERSITY will operate and maintain said service line and metering equipment and provide specifications for metering equipment to CITY within a reasonable time period to allow for installation.
- 4.4. CITY will provide GIS location on installed piping to UNIVERSITY. UNIVERSITY shall own and maintain piping on UNIVERSITY side of meter.
- 4.5. CITY will install appropriate backflow systems to eliminate the risk of cross connection between the CITY water system and the UNIVERSITY's non-potable water system.
- 4.6. Unless a billing dispute is filed by CITY with UNIVERSITY, CITY will pay UNIVERSITY within 30 calendar days following receipt of billing statements.

ARTICLE 5 - COMPENSATION

CITY shall pay UNIVERSITY in accordance with the following:

- 5.1. UNIVERSITY shall bill CITY no more frequently than monthly but at a minimum on a quarterly basis for potable water provided to CITY by UNIVERSITY. CITY shall pay UNIVERSITY for metered water delivered at a rate of \$2.80 per 1,000 gallons delivered for the agreement year beginning upon the final execution of the agreement. The contract may be renewed in accordance with Article 7 for four (4) successive one year terms if sufficient funds are available. At the end of the initial five (5) annual terms the parties can renegotiate the compensation terms.

ARTICLE 6 - LIABILITY

- 6.1. General. Having considered the potential liabilities that may exist during the performance of the SERVICES, the UNIVERSITY fee for the SERVICES and in consideration of the promises contained in this AGREEMENT, CITY and

UNIVERSITY agree to allocate and limit such liabilities in accordance with this Article to the extent permitted by Oklahoma statutes, constitution, and case law.

- 6.2. Liability. Each party will be responsible for its own negligent and intentional acts and omissions, with each party's liability governed by the Oklahoma Governmental Tort Claims Act, Okla. Stat. tit. 51 §§ 151 et. seq.
- 6.3. Employee Claims. Each party will comply with applicable provisions of Oklahoma worker's compensation laws.
- 6.4. Consequential Damages. To the extent permitted by Oklahoma statutes, constitution, and case law, CITY shall not be liable to UNIVERSITY, and UNIVERSITY shall not be liable to CITY, for any special, indirect or consequential damages resulting in any way from the performance of the SERVICES.
- 6.5. 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 7 - TERMINATION

This AGREEMENT shall automatically be renewed on a year to year basis, for up to four (4) successive one year terms, unless notice of intent to terminate is given by either party at least ninety (90) days prior to the AGREEMENT anniversary date.

ARTICLE 8 - DELAY IN PERFORMANCE

Neither CITY nor UNIVERSITY 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 CITY or UNIVERSITY 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 9 - COMMUNICATIONS

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

UNIVERSITY: Associate Vice President for Facilities Management
University of Oklahoma
160 Felgar Street
Norman OK 73019-1026

Legal Notice:

The Executive Secretary of the Board of Regents of the University of
Oklahoma
660 Parrington Oval
Room 119
Norman, OK 73019

CITY:

City of Norman
Attn: Mike White – Fleet Program Manager
201-C West Gray
P.O. Box 370
Norman OK 73070-0370

Legal Notice:

City Clerk of City of Norman
201 W. Gray
Norman, OK 73070

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of UNIVERSITY and CITY.

ARTICLE 10 - WAIVER

A waiver by either CITY or UNIVERSITY 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 11 - 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 12 - INTEGRATION

This AGREEMENT represents the entire and integrated AGREEMENT between CITY and UNIVERSITY. Except as otherwise specified herein, this AGREEMENT supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT. This AGREEMENT may only be changed by written amendment executed by both parties.

ARTICLE 13 - SUCCESSORS AND ASSIGNS

CITY and UNIVERSITY 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.

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IN WITNESS WHEREOF, CITY and UNIVERSITY have executed this AGREEMENT.
DATED this _____ day of _____, 2022.

CITY OF NORMAN

By: _____
Larry Heikkila, Mayor

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form this 17 day of August, 2022.

Matthew C. Rom
City Attorney



BOARD OF REGENTS OF THE
UNIVERSITY OF OKLAHOMA

By: *Matthew C. Rom*

Name: Matthew C. Rom

Title: Associate Vice President for Facilities
Management

ATTEST:

Meghan Warren
Meghan Warren, Secretary