

AGREEMENT  
FOR  
ENGINEERING SERVICES

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

WITNESSETH

WHEREAS, OWNER intends to design and bid the PROJECT consisting of water line replacements from Robinson Street to Alameda Street;

WHEREAS, the PROJECT, in addition to Phase I which replaced the water lines associated with the Porter Acres Intersection project currently being completed, will ensure that new water lines are in place prior to completion of new paving and ancillary improvements;

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 2/9/2021.

**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 operations reports, record drawings, and equipment manuals for the WRF. 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 and Workshops: OWNER will participate in progress meetings and workshops with ENGINEER or contractor(s) defined in Attachment B, 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, 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. ENGINEER agrees to indemnify, and hold harmless the OWNER, its officers, servants, and employees, from and against legal liability for all third party tort claims, losses, damage, cost, and expense (including reasonable attorneys' fees and accountants' fees recoverable under applicable law) from bodily injury (including death) or tangible property damage caused by a negligent act, error, or omission of ENGINEER in the performance of services under this Agreement. OWNER agrees to indemnify, and hold harmless 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 recoverable under applicable law) 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. 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 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.

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 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: Bret Cabiness, P.E.  
Cabiness Engineering, LLC  
1016 24<sup>th</sup> Avenue NW  
Norman, OK 73069  
405-329-2555

OWNER: Rachel Croft  
Norman Utilities Authority (NUA)  
201-C West Gray  
P.O. Box 370  
Norman OK 73070  
405-217-7778  
Rachel.Croft@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 - 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 19 - 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\_\_\_\_\_.

**Cabbiness Engineering, LLC – ENGINEER**

ATTEST

By:

Printed  
Name:

Title:

*J. Bret Cabbiness*  
J. BRET CABBINESS  
PRESIDENT

*Vicki Cabbiness*  
Vicki Cabbiness  
Business Manager

**Norman Utilities Authority- OWNER**

APPROVED as to form and legality this 5 day of February, 2021.

*[Signature]*  
City Attorney

APPROVED by the Trustees of the Norman Utilities Authority this 9<sup>th</sup> day of February, 2021.

By:

Printed  
Name:

Title:

*[Signature]*  
Breea Clark  
Chairman



*[Signature]*  
Brenda Hall  
Secretary

## ATTACHMENT A

SCHEDULE

ENGINEER shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below:

Task	Feb 2021	March 2021	April 2021	May 2021	June 2021	July 2021	Aug 2021	Sept 2021	Oct 2021	Nov 2021	Dec 2021
1											
2											
3											
4											
5											

## ATTACHMENT B

**SCOPE OF SERVICES**

## General Project Scope:

The general scope of work for this project will be the development of construction plans for the water line replacement for sections of 12-inch and 8-inch water line along Porter Avenue and the adjoining streets generally from Robinson Street to Alameda Street in the City of Norman. All design and construction requirements of the City of Norman will be followed for the replacement of approximately 5,000 linear feet of 12-inch and 1,500 linear feet of 8-inch water lines. It is understood the scope of work will encompass, but not be limited to: research of existing public and private utility owners; development of a preliminary construction plans; identification of potential construction issues and preliminary estimated construction costs; participation in a preliminary review meeting with staff and other stakeholders; conduct utility conferences with all effected utility line owners; completion of final construction plans for review; participate in a final review meeting with staff; prepare bid documents for the owner to advertise and take competitive bids; provide limited construction administration support services; and the culmination of the project by the delivery of as-built plans.

## Task 1 – Preliminary Design

The Engineer will provide preliminary design services for the project including:

- A. Coordinate and hold a project kickoff meeting with the owner to outline the project scope and anticipated project schedule. The meeting will include gathering of project expectations by the owner staff members and the design team;
- B. Conduct a field reconnaissance of the project area looking at above ground features and potential construction issues;
- C. Perform topographic survey for the project;
- D. Prepare Preliminary Construction Plans (65% Complete) for review by the owner. The preliminary construction plans will show the existing topographical ground features, existing utilities, existing and proposed water lines, domestic and fire service reconnections, detailed designs for tie-ins and intersections at zoomed scales, restoration requirements, any additional right-of-way or easements required for construction, and preliminary construction quantities;
- E. Prepare preliminary construction cost estimate;
- F. Participate in review meeting with Owner.

## Task 2 – Final Design

The Engineer will provide final design services including:

- A. Incorporate review comments from 65% plan review;
- B. Prepare construction plans, specifications, and supporting documents for the project; The final construction plans will include, but are not limited to:
  - 1. Professional engineer's sealed and signed title sheet
  - 2. Location map
  - 3. Estimated quantities and pay items
  - 4. General construction notes
  - 5. Construction quantity summary sheets
  - 6. Plan and profile sheets
  - 7. Construction detail sheets
  - 8. Erosion control sheets
  - 9. Storm water management plan.
- C. Participate in review meeting for final plans;
- D. Incorporate final comments; and
- E. Issue final construction plans and specifications for Owner approval.



### Task 3 – Bidding

The Engineer will provide bidding services for the project including the following:

- A. Distribute electronic plans to prospective bidders and maintain plan holder list;
- B. Hold pre-bid meeting including preparation of agenda and minutes;
- C. Issue addenda as required;
- D. Prepare Engineer's Estimate for the proposed project incorporating addenda;
- E. Review bids, prepare bid tabulation, and provide contract award recommendation; and
- F. Provide conformed contract documents in hardcopy (3 sets of 11x17) and in electronic (PDF) format.

### Task 4 – Limited Construction Administration

The owner will provide the overall project management and on-site construction inspection for the duration of the project's construction. The Engineer will provide limited construction administration and assist the owner in monitoring the construction progress for the project as follows:

- A. Coordinate and lead a pre-construction meeting;
- B. Review and approve all shop drawings and material submittals;
- C. Review and respond to all requests for information (RFI's);
- D. Review and approve monthly and final pay claims;
- E. Prepare change orders and/or contract amendments;
- F. Attend monthly project meetings;
- G. Participate in final inspection and prepare punch list;
- H. Participate in punch list inspection; and
- I. Provide recommendation to accept upon completion of the work in accordance with the contract documents.

### Task 5 – As-Built Drawings/Documents

Upon completion of construction and acceptance of the project by the owner, the Engineer will:

- A. Update the original construction plans to reflect the project's actual construction. The as-built plans will reflect the owner provided mark-ups that will be provided by the owner and/or contractor to the Engineer at the final inspection. All changes and deviations from the original construction plans will be highlighted in red ink in accordance with standard drafting practices.
- B. The Engineer will provide all as-built drawing files, in the most current AutoCAD format, as well as one (1) electronic copy (PDF file format) of the as-built plans and GIS layers for new water lines and appurtenances.

## ATTACHMENT C

COMPENSATION

The OWNER will compensate the ENGINEER on a lump sum basis for the SERVICES rendered. The lump sum fee is broken down below by task as defined in the Scope of Services:

<b>Task</b>	<b>Task Description</b>	<b>Total Fee Amount</b>
1.0	Preliminary Engineering	\$31,500
2.0	Final Design	\$22,500
3.0	Bidding	\$1,000
4.0	Limited Construction Administration	\$1,100
5.0	As-Built Drawings/Documents	\$2,000
<b>Total</b>		<b>\$58,100</b>

ENGINEER may submit interim statements, not to exceed one per month, for partial payment for SERVICES rendered. The statements to OWNER will be by task for the percentage of work actually completed. The OWNER shall make interim payments within 30 calendar days in response to ENGINEER's interim statements.