

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between The City of Norman (CITY) and Parkhill, Smith & Cooper, Inc dba "Parkhill" (CONSULTANT) for the following reasons:

1. The CITY intends to retain a Construction Manager-at-Risk to manage the construction for the Misty Lake Dam Repair in Summit Lakes in Norman, Oklahoma (the PROJECT); and,
2. The CITY requires certain design, analysis and construction and engineering oversight 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 CITY and the CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this AGREEMENT shall be ___th day of _____, 2021.

ARTICLE 2 - GOVERNING LAW

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

ARTICLE 3 - SCOPE OF SERVICES

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

ARTICLE 4 - SCHEDULE

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

ARTICLE 5 -COMPENSATION

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

ARTICLE 6 - CITY'S RESPONSIBILITIES

The CITY shall be responsible for all matters described in **Attachment A**. The CITY hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by the CITY to the CONSULTANT. If the CITY does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to the CONSULTANT, the CITY shall obtain a license or right to use, including the right to sublicense to the CONSULTANT. The CITY 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 CITY 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 applicable law, including the Constitution of the State of Oklahoma, the CONSULTANT and the CITY 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 CITY 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. In any and all claims asserted by any employee of the CONSULTANT against any indemnified party, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT or any of the CONSULTANT's employees under workers' compensation acts, disability benefit acts, or other employee benefit acts. The acceptance by CITY 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 CITY of any action, right, or remedy otherwise available to the CITY 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:

- a) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- b) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.
- d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

The CONSULTANT shall, upon written request, furnish the CITY certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to the CITY. The CITY shall require all project contractors to include the CITY, 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 CITY 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; (b) the failure of any contractor, subcontractor, vendor, or other PROJECT participant, not under contract to the CONSULTANT, to fulfill contractual responsibilities to the CITY 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 **Exhibit A, Scope of Services**. In the event the CITY 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; (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 whose existence the CONSULTANT cannot 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 **Exhibit 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 CITY 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 CITY's sole risk and without liability or legal exposure to 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 CITY as part of the SERVICES shall become the property of the CITY; provided, however, that the CONSULTANT shall have the unrestricted right to their use for the purposes of this Project.

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 CITY may terminate or suspend performance of this AGREEMENT for the CITY's convenience upon written notice to the CONSULTANT. The CONSULTANT shall terminate or suspend performance of the SERVICES on a schedule acceptable to the CITY, and the CITY 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 CITY 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 CITY 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:

CITY:

Brandon L. Brooks, E.I.T.
Staff Engineer
City of Norman
P.O. Box 370
Norman, OK 73070
(405) 366-5459 Phone
(405) 366-5418 FAX

CONSULTANT:

Parkhill
William Swain, PE, PLS
Team Leader
3226 Bart Conner Drive
Norman, OK 73072
(405) 366-8541 Phone

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

ARTICLE 17 - DISPUTES

In the event of a dispute between the CITY 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 resolution of the dispute as allowed by applicable law and regulation. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT agrees that all persons employed by CONSULTANT shall be treated equally by CONSULTANT without regard to or 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, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of Oklahoma, and City. CONSULTANT agrees that, during the performance of this Agreement, CONSULTANT and any other parties with whom CONSULTANT may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of 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, or any other status protected by law.

ARTICLE 19 - WAIVER

City and CONSULTANT agree that no waiver of a breach of any provision of this Agreement by either CONSULTANT or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or CONSULTANT to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or 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 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 **Attachment A** incorporated by this reference, represents the entire and integrated AGREEMENT between the CITY 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 CITY 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 CITY 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 CITY'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 CITY and the CONSULTANT. Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than the CITY and the CONSULTANT.

IN WITNESS WHEREOF, CITY and PARKHILL, SMITH & COOPER, INC have executed this AGREEMENT.

DATED this ___th day of _____, 2021.

The City of Norman
(CITY)

PARKHILL, SMITH & COOPER, INC
(CONSULTANT)

Signature _____

Signature *William Swain*

Name Breea Clark

Name William Swain, PE, PLS

Title Mayor

Title Team Leader

Date _____

Date 10/6/2021

Attest:

Attest:

City Clerk

[Signature]
Secretary



Approved as to form and legality this 7 day of Oct 2021.

Elizabeth Allen
City Attorney

**ATTACHMENT A
ANTICIPATED SCOPE OF SERVICES**

With a Construction Manager at Risk (CMaR) delivery method, the scope of work required from the Engineer can vary significantly based on the CMaR's approach to construction, the construction schedule, value engineering, as well as the number of meetings and correspondence. Likewise, the involvement and level of effort requested by the Client can affect the actual effort requested of the Engineer during the construction phase.

Parkhill has estimated effort for Construction Administration and estimated effort for part-time Inspection of critical stages of construction. The estimated fee is based on:

Construction Administration:

40 hours for a Principal Engineer

- Submittal Review
- Correspondence & Management
- Project Meetings & Value Engineering
- Record Drawing Review

8 hours of Staff Professional Support

- Submittal Processing & Correspondence
- Review Testing Results
- Miscellaneous Correspondence
- Process Contractor Pay Claims
- Contractor's Record Drawing Redline Notes

Note: The level of CA is assumed. The Contractor and Client have significant impact on the level of involvement of the Engineer in a CMaR delivery method. Any services requested beyond the level of effort basis of the Scope of Services will be considered Additional Services and will be invoiced accordingly. The Owner will be notified of the status of expenditures prior to exceeding the NTE amount.

Part-time Inspection/Observation:

Construction Schedule – 90 Days from NTP

Assumed Heavy Construction Schedule – 6 weeks

- 80 hours of Staff Professional
 - 16 hours/week – Earthwork & Structures – 4 weeks – 64 hours
 - 8 hours/week – Demolition & Finish Work – 2 weeks – 16 hours
- 24 hours of Professional Engineer
 - 4 hours/week – Site Meeting & Progress Observations

Note: This is a part-time inspection/observation Scope of Services proposal. Contractor's schedule and the Client's request for inspection could change the anticipated level of effort. Any services requested beyond the level of effort basis of the Scope of Services will be considered Additional Services and will be invoiced accordingly. The Owner will be notified of the status of expenditures prior to exceeding the NTE amount.

Parkhill
Hourly Rate Schedule
 January 1, 2021 through December 31, 2021

Client: _____

Project: _____

Agreement Date: _____

Location: _____

CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE
SUPPORT STAFF I	\$55.00	PROFESSIONAL LEVEL III		PROFESSIONAL LEVEL VI	
SUPPORT STAFF II	\$65.00	Architect	\$138.00	Architect	\$229.00
SUPPORT STAFF III	\$90.00	Civil Engineer	\$163.00	Civil Engineer	\$247.00
SUPPORT STAFF IV	\$96.00	Electrical Engineer	\$158.00	Electrical Engineer	\$257.00
SUPPORT STAFF V	\$106.00	Interior Designer	\$124.00	Interior Designer	\$198.00
SUPPORT STAFF VI	\$115.00	Landscape Architect	\$134.00	Landscape Architect	\$213.00
		Mechanical Engineer	\$158.00	Mechanical Engineer	\$257.00
		Structural Engineer	\$156.00	Structural Engineer	\$236.00
		Surveyor III	\$110.00	Professional Surveyor VI	\$180.00
		Other Professional	\$122.00	Other Professional	\$194.00
		PROFESSIONAL LEVEL IV		PROFESSIONAL LEVEL VII	
PROFESSIONAL LEVEL I		Architect	\$170.00	Architect	\$295.00
Architect	\$113.00	Civil Engineer	\$190.00	Civil Engineer	\$295.00
Civil Engineer	\$117.00	Electrical Engineer	\$186.00	Electrical Engineer	\$295.00
Electrical Engineer	\$120.00	Interior Designer	\$135.00	Interior Designer	\$222.00
Interior Designer	\$107.00	Landscape Architect	\$145.00	Landscape Architect	\$295.00
Landscape Architect	\$107.00	Mechanical Engineer	\$186.00	Mechanical Engineer	\$295.00
Mechanical Engineer	\$117.00	Structural Engineer	\$181.00	Structural Engineer	\$295.00
Structural Engineer	\$112.00	Surveyor IV	\$127.00	Professional Surveyor VII	\$200.00
Surveyor I	\$85.00	Other Professional	\$144.00	Other Professional	\$295.00
Other Professional	\$105.00				
		PROFESSIONAL LEVEL V			
PROFESSIONAL LEVEL II		Architect	\$206.00		
Architect	\$122.00	Civil Engineer	\$229.00		
Civil Engineer	\$131.00	Electrical Engineer	\$227.00		
Electrical Engineer	\$135.00	Interior Designer	\$163.00		
Interior Designer	\$113.00	Landscape Architect	\$176.00		
Landscape Architect	\$113.00	Mechanical Engineer	\$227.00		
Mechanical Engineer	\$135.00	Structural Engineer	\$219.00		
Structural Engineer	\$127.00	Professional Surveyor V	\$150.00		
Surveyor II	\$95.00	Other Professional	\$160.00		
Other Professional	\$111.00				

Expenses: Reimbursement for expenses as listed, but not limited to, incurred in connection with services, will be at cost plus 15 percent for items such as:

1. Maps, photographs, postage, phone, reproductions, printing, equipment rental, and special supplies related to the services.
2. Consultants, soils engineers, surveyors, contractors, and other outside services.
3. Rented vehicles, local public transportation and taxis, road toll fees, travel, and subsistence.
4. Special or job-specific fees, insurance, permits, and licenses applicable to work services.
5. Mileage at IRS-approved rate.

Rate for professional staff for legal proceedings or as expert witnesses will be a rate one-and-a-half times these Hourly Rates. Excise and gross receipt taxes, if any, will be added as an expense.

Foregoing Schedule of Charges is incorporated into the Agreement for Services provided, effective January 1, 2021 through December 31, 2021. After December 31, 2021, invoices will reflect the Schedule of Charges currently in effect.