

**CONTRACT FOR PROFESSIONAL ENGINEER SERVICES
PROJECT NO. WMC0TE
INDEPENDENT ENGINEER TO SERVE THE MCGEE CREEK AUTHORITY**

This contract is made and entered into this 14TH day of MARCH, 2024 by and between the McGee Creek Authority (“MCA”), a public trust, and Smith Roberts Baldischwiler, LLC (“Engineer”).

WITNESSETH:

WHEREAS, the member participants of the MCA are the Southern Oklahoma Development Trust (“SODT”), the City of Atoka (“Atoka City”), the County of Atoka (“Atoka County”), the Oklahoma City Water Utilities Trust (“OCWUT”), and the City of Oklahoma City (“Oklahoma City”); and

WHEREAS, the Oklahoma City Utilities Department Director is the General Manager (“General Manager”) of the OCWUT and the MCA; and

WHEREAS, the MCA operates a water collection, storage and transmission delivery system that supplies water or makes water available to the member participants (“water system”); and

WHEREAS, the MCA is charged with the responsibility to engage engineers for the purpose of preparing such preliminary and detailed studies and designs as may be required for the operation, expansion, and maintenance of the water system; and

WHEREAS, it is imperative that the MCA be supplied with certain professional services in accordance with their Bond Indenture and Trust Indenture; and

WHEREAS, the Engineer has agreed to provide such services to the MCA as herein provided; and

WHEREAS, the Engineer has been selected under the standards adopted and the procedures prescribed by the resolution establishing procedures for selection of architects, engineers and planners adopted by the MCA on March 27, 2014 (Item No. IV.G.) which resolution, with its amendments, is made a part of this Contract by reference.

NOW, THEREFORE, in consideration of the mutual obligations, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. **Employment.** The Engineer is hereby employed as an independent consulting engineer and, whenever necessary, as the “Engineer of Record” for the MCA, to perform in accordance with good engineering practices and in the best interests of MCA such professional engineering services regarding the MCA water system as may be directed from time to time by the MCA through the General Manager or by the General Manager on behalf of the MCA.

2. **Professional Services.** The professional services to be rendered by the Engineer pursuant to this Contract shall consist of, but not be limited to, the following:
- a. To serve as Engineer of Record in accordance with the Trust Indenture and Bond Indenture for the period covered by this Contract.
 - b. Provide continued maintenance of the files and records of design and construction phases of construction projects completed by the Engineer under this agreement, to include all plans, specifications, shop drawings, equipment submittals, reports and other matters of record.
 - c. Maintain availability of competent, experienced professional personnel familiar with all phases of design and construction of water systems.
 - d. Provide services required for projects, improvements and extensions, including investigations, reports, surveys, plans, specifications, contract documents, and inspection when authorized by the MCA.
 - e. Provide such other inspection, surveys, studies, recommendations, procedures, improvements, repairs, replacements, maintenance, or other action as authorized by the MCA for the benefit of the water system.
 - f. Regularly review the maintenance, operation, and integrity of the water system and recommend such studies, surveys, inspections, procedures, improvements, repairs, replacements, maintenance, or other action to be taken by the MCA for the benefit of the water system.
 - g. Prepare preliminary and detailed studies, cost estimates and feasibility reports as authorized by the MCA.
 - h. Develop plans and specifications for projects required for maintenance and operation of the water system.
 - i. Provide professional services and analysis regarding litigation, claims, and interest in real property.
 - j. Review water fees and charges.
 - k. Provide Certifications as required by the MCA Bond Indentures.
 - l. Monitor Capital Improvement Program activity.
 - m. Assist, as directed by the MCA, in developing a Master Plan for the water system.
 - n. Such additional services as may be authorized by the MCA.

- o. Develop preliminary plans and specifications (as outlined below), where the total fee does not exceed \$650,000 per fiscal year and the fixed limit of construction shall not exceed \$2,000,000 per project.
- (1) Prepare and make all necessary preliminary surveys, investigations, studies, reports and preliminary general plans and specifications. The preliminary investigation shall include a topographical survey of the site, layout of any existing, proposed, and/or recommended sanitary sewers, water lines, storm sewers, all other underground obstructions, street improvements, site drainage and detention studies, as appropriate, any and/or all of which might affect the construction of the project. The preliminary general plans and specifications shall be approved by the City Engineer. All plans shall be submitted with the appropriate title sheet as indicated on the City of Oklahoma City Public Works web page: www.okc.gov/pw (OKC Autocad Standards link).
 - (2) Prepare a utility and right-of-way plan showing recommended alignment for relocation of utilities and recommended right-of-way needs. The plan shall include existing and proposed easements. The plan shall show ownership of all properties affected by the project. The Engineer shall acquire the limited ownership list. The Engineer shall complete and submit the limited ownership list within thirty (30) calendar days of the date of a written work order.
 - (3) Prepare a construction cost estimate of the improvements, extensions and repairs, and an estimate of all engineering fees, testing costs, right-of-way costs, and inspection fees in connection therewith.
 - (4) Hold all necessary conferences with the MCA, the United States Bureau of Reclamation (BOR), and all other interested parties (inclusive is the requirement for the Engineer to ensure all utility and right-of-way/easement requirements are well established prior to Preliminary Report submittal). This includes the conduct of a Utility Conference by the Engineer at a location determined by MCA.
 - (5) Prepare the Preliminary Report for submittal to the MCA and BOR covering the Engineer's preliminary surveys, studies, investigations and other items as specified in the paragraph i. (1), (2) and (3) hereof. If applicable, the report shall include a drainage study with complete computations and calculations and shall cover the total construction work by phases or sections and shall recommend to the MCA the order of construction and completion of each phase of construction.
 - (6) Furnish the MCA three (3) hard copies and one (1) PDF copy of the Preliminary Report free of cost to the MCA. When deemed necessary,

furnish the BOR copies of the Preliminary Report in the format(s) the BOR requires. The cost of any additional copies of Preliminary Reports as the MCA may require will be reimbursed at the actual cost thereof.

- (7) Geotechnical Investigation:
 - a. The Engineer will recommend to the MCA the name of a geotechnical investigation/services firm from the MCA's listing of annual on-call engineering and testing laboratory contract firms.
 - b. The Engineer will identify and coordinate all requirements for geotechnical investigation and procure all geotechnical services related thereto, including but not limited to sampling, test boring, subsurface explorations, analysis and other investigations required for determining conditions and geotechnical recommendations for foundations and paving design. Identify and coordinate sampling and analysis of water and other substances as appropriate.
 - c. The MCA will approve the selected laboratory and the Engineer will pay the costs of such sampling, analysis, borings, tests, or explorations and investigations.
- (8) Prepare legal descriptions for the necessary temporary and permanent easements and prepare legal descriptions necessary for property to be acquired on forms provided by the MCA. Additionally, provide right-of-way ownership maps showing locations and dimensions of right-of-way to be acquired and assist the MCA when requested in negotiations with owners of property acquired for or affected by the improvements.
- (9) Review and recommend approval of testing laboratory claim vouchers within ten (10) working days of receipt of claim.
- (10) The Preliminary Report shall be recommended by the General Manager for formal approval by the MCA (if applicable, the Engineer shall also prepare an Engineering Report for submittal to the Oklahoma Department of Environmental Quality (ODEQ) and the BOR in accordance with each Agencies' requirements).
- p. Develop final plans and specifications (as outlined below), including detailed construction cost estimate, for construction contracting of projects for extensions and improvements of the water system, including surveys, plans, specifications, contract documents and inspections when authorized by the MCA, where the total fee does not exceed \$650,000 annually.
- (1) Prepare final plans, specifications and construction cost estimate.

- (2) After approval of the Preliminary Report in whole or in part by the MCA, the Engineer shall proceed as directed in writing by the City Engineer to prepare detailed plans and specifications, using wherever applicable, Oklahoma City standards, details and specifications for such work. The Engineer shall complete said plans and specifications for submission to the MCA for its approval.
- (3) Prepare and furnish the MCA all final plans and specifications, all necessary forms for construction proposals and advertisements for Bids, subject to approval of the MCA, employing wherever applicable, standard MCA forms, in completed form.
 - a. Scale for plan and profile sheets for preliminary and final plans shall be approved by the City Engineer prior to preparation of plans.
 - b. Aerial photographs will not be permitted for plan and profile sheets of the final construction plans.
 - c. The Engineer shall indicate on final plan and profiles all water lines, sanitary sewer lines, gas lines, oil lines, telephone conduits and all other underground obstructions which might affect the construction of the project.
- (4) Notify all known utility companies and other entities with facilities affected by the proposed Project. Furnish one (1) copy of final plans and specifications to each of the utility companies as determined necessary to coordinate the project construction and utility relocations at no cost to the MCA and conduct a final utility conference at completion of 60% final plans.
- (5) The 60% submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the 60% plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report submittal.

Furnish the MCA up to two (2) copies of the project 60% plans for review along with a detailed Fixed Limit of Construction cost estimate for said improvements, extensions and repairs. This submittal does not stop, impact or otherwise delay the Engineer's contract-allotted work order time for completion and submittal of final plans and specifications. Incorporate all recommended changes prior to submittal of the 95% final plans and specifications.

- (6) The 95% submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the 95% plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations that are required for a complete review of the storm sewer system design. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report and 60% plan submittal.

Upon completion of 95% final plans, the Engineer will submit “check print” sets to the Project Manager for review by appropriate departments/divisions. Upon completion of the “check print” reviews, the Engineer shall revise the plans accordingly. The Project Manager shall resolve any conflicts in comments. Upon completion of corrections, the Engineer will then submit final plans check sets (along with the annotated “check print” copies) for a “final” review by the Project Manager.

- (7) The Final Plan submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the Final plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations that are required for a complete review of the storm sewer system design. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report and 95% plan submittal.

Prepare and furnish the MCA an electronic copy of all final plans and specifications, all necessary forms for Electronic Bidding and advertisements for Bids, subject to approval of the MCA, employing standard MCA forms, in completed form.

Furnish the MCA one (1) PDF of the final plans and specifications, all free of cost to the MCA. The cost of any additional copies of plans and specifications as the MCA may require will be reimbursed at the actual cost thereof.

- (8) Meet with the MCA or its representatives at any time requested for consultation or conference as directed in writing by the City Engineer.
- (9) Prior to the submission of Bidding Documents to the MCA for solicitation of Bids, the Engineer shall submit plans and specifications required for the granting of all necessary building permits.

- (10) Prepare all necessary plans, studies and applications for submission to MCA, State and Federal authorities as may be required for the initiation, prosecution, construction and for approval of grants and permits at no additional cost to the MCA.
- (11) Final design shall include the establishment of permanent horizontal and vertical alignment control points throughout the entire project limits using United States Geological Survey (USGS) data. The Engineer shall provide a permanent benchmark within two hundred (200) feet of the beginning and ending of the proposed construction. All surveys and control points shall be tied to the City's GIS control network and datum.

q. Provide Bidding Services as authorized by MCA (and as outlined below):

- (1) Meet with the MCA or its representatives at any time requested for consultation or conference, as directed in writing by the Administrator. In this connection, the Engineer shall hold at least one (1) Pre-Bid Conference with prospective Bidders. The Engineer shall provide a power point presentation of the Bidding Documents for the purpose of pre-bid information to the prospective Bidders.
- (2) Answer all MCA and Bidder's questions regarding the bidding of the project and, upon approval by the City Engineer, prepare an electronic copy of all addendums for distribution.
- (3) The MCA will receive the Bids through the Electronic Bidding System and the Engineer will receive a copy of the Bids from the MCA. The Engineer will review and evaluate the Bids and will make recommendations to the MCA for an award. The Engineer shall assist, review and make recommendations to the MCA on all construction contract issues.
- (4) If Bids are received, all of which exceed the Fixed Limit of Construction, the Engineer shall revise its plans as directed by the MCA.

r. Provide Construction Administration Services as authorized by MCA (and as outlined below):

- (1) The Engineer shall provide administration of the construction contract during construction and until final payment is made to the Construction Contractor. The Engineer will have the authority to act on behalf of the MCA only to the extent provided in this Contract, unless otherwise modified by written instrument.
- (2) Meet with the MCA or its representatives at any time requested for consultation or conference as directed in writing by the General Manager.

- (3) Assist in coordination of pre-work conferences for the Construction Contractor, the MCA and all other interested parties. The MCA will issue all work orders for the project.
- (4) Establish permanent horizontal and vertical alignment control points throughout the entire project limits from which the Construction Contractor shall set its control for construction (if applicable to this project, the Engineer will also provide bridge centerline horizontal and vertical control points). Provide a permanent benchmark within two hundred (200) feet of the beginning and ending of the proposed construction. All surveys and control points shall be tied to the City's GIS control network and datum. Construction staking is to be performed by the Construction Contractor. The Engineer will periodically review the Construction Contractor's construction staking survey field notes and the actual staking to verify line and grade is in accordance with the Bidding Documents.
- (5) Provide interpretation of the plans and specifications in accordance with the intent of the Bidding Documents. Such interpretations shall be made upon request of the MCA and its representatives or the Construction Contractor, to safeguard the MCA against defects and deficiencies in the construction. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by the Construction Contractor. The Engineer does not guarantee the performance of the contract by the Construction Contractor, nor is it responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it shall not be responsible for a Construction Contractor's failure to carry out the work in accordance with the Bidding Documents.
- (6) Perform coordination of the work of inspection bureaus and laboratories selected by the MCA for the inspection and testing of construction materials. Receive reports and recommend approval or rejection of the materials based upon reports made by such laboratories or bureaus. The costs of all such tests and inspection by laboratories or bureaus will be paid by the MCA.
- (7) Review and recommend approval of testing laboratory claim vouchers within ten (10) calendar days of receipt of claim.
- (8) The Engineer shall visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work. The Engineer will further determine, in general, if the work is being performed in a manner indicating that the work, when completed, shall be in accordance with the Bidding Documents. However, the Engineer is not required to make exhaustive or continuous on-site inspections to check quality or quantity of the work. The Engineer will keep the MCA informed

of progress of the work and will endeavor to guard the MCA against defects and deficiencies of the work. The Engineer does not guarantee the performance of the contract by the Construction Contractor, nor is it responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it shall not be responsible for a Construction Contractor's failure to carry out the work in accordance with the Bidding Documents.

- (9) Review all necessary information for monthly estimates (**within seven (7) calendar days of receipt from the contractor**) of the quantity of work performed, and review the claim vouchers for payments to be made to the Construction Contractor during the progress of the work and upon completion of any and all work and report the same to the MCA.
- (10) Review the Construction Contractor's final request for payment (**within fourteen (14) calendar days of receipt from the contractor**) and certify that, to the best of its knowledge and industry standards, the completed work conforms to plans and specifications.
- (11) Prepare and keep a record of the work performed by any contractor on this project and file with the MCA a monthly progress report covering the work performed by the contractor(s). The progress report shall be attached to the Construction Contractor's claim for partial or monthly payment.
- (12) Except as otherwise provided in this contract, communications with the Engineer's consultants will be through the Engineer. Communications with the Construction Contractor's subcontractors and material suppliers will be through the Construction Contractor. Communications with other MCA contractors will be through the MCA. The Engineer shall be available at all times for the purpose of communication.
- (13) The Engineer shall recommend to the General Manager rejection of work that does not conform to the Bidding Documents. At any time during construction, the Engineer may be given the authority to require additional inspection or testing of the work by the General Manager.
- (14) The Engineer shall review for conformance with Bidding Documents, and approve or take other appropriate action upon the Construction Contractor's submittals, such as shop drawings, product data and samples. The Engineer's review of submittals will be promptly completed, but no longer than fourteen (14) calendar days from receipt of submittals. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Contractor as required by the Bidding Documents. The Engineer's review of

the Construction Contractor's submittals will not relieve the Construction Contractor of its contractual obligation to the MCA as required by the Bidding Documents. The Engineer's review of the Construction Contractor's submittals will not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- (15) The Engineer shall reply to the Construction Contractor's requests for information, prepare clarification drawings, prepare change orders, field orders, amendments, field changes and construction change directives. The Engineer may recommend minor changes in the work, not inconsistent with the intent of the Bidding Documents. Such recommended changes shall be made by written order approved by the General Manager and shall be binding upon the Construction Contractor.
- (16) The Engineer shall conduct observations and inspections as required to determine the quality of work to be accepted and the date or dates of final completion and acceptance. The Engineer shall receive and forward to the MCA all written warranties and any related documents required by the Bidding Documents and assembled by the Construction Contractor. The Engineer will recommend approval of the Construction Contractor's final certificate of payment upon completion of the work and compliance with the requirements of the Bidding Documents.
- (17) The Engineer will review daily reports furnished by the MCA's inspector to evaluate and determine compliance with the Bidding Documents. Significant variations between reported conditions and the Bidding Documents shall be verified by the Engineer and resolved with the Construction Contractor and the MCA. The Engineer's duty to review daily reports and initiate remedial action shall not extend to the Construction Contractor's construction means, methods, techniques, sequencing or procedures or for safety precautions and programs in connection with the work.
- (18) The Engineer shall maintain a record ("log") of all documents it receives, creates or transmits during the construction of the project. The log shall include time requirements of responses if needed.

Clarifications to Construction Administration - Task 4

- (1) The Engineer shall be responsible for ensuring Construction Contractor compliance with the Construction Contract Documents. As such, the Engineer will administer the Construction Contract and will formally certify that the Construction Contract has been completed in conformance with the Construction Contract Documents as prepared by the Engineer.

- (2) Coordinate, schedule, and administer the pre-work conference(s) for the Construction Contract. This will include scheduling and coordination with the Construction Contractor, MCA, other City departments and Trusts affected by the project, and all other interested parties such as utility companies, regulatory agencies, testing laboratories, inspection services, etc. The Engineer will prepare the required sign-in sheet and agenda prior to the meeting and will distribute minutes within two (2) days after the meeting. During the pre-work conference(s), the Engineer will discuss:
 - a) Overall project intent and included work;
 - b) key items within plans and specifications;
 - c) Required shutdowns or outages that will impact service to customers or normal facility operations;
 - d) additional permits necessary for completion of the Construction Contract Documents, including, but not limited to: stormwater permits, work zone permits, building permits, etc.;
 - e) Construction Contractor schedule and milestones;
 - f) material testing laboratory and required test schedule;
 - g) pipeline and/or equipment factory testing and testing after installation including startup procedures;
 - h) SCADA installation requirements, testing and milestones;
 - i) operation and maintenance manuals and equipment warranties;
 - j) processes for claims, submittals and other project documents;
 - k) project acceptance and commissioning;
 - l) Engineer certification of project completion in accordance with the Construction Contract Documents.

- (3) The Engineer will review the Contractor's Project Schedule submissions for compliance and review revisions monthly, or more frequently as necessary, to determine if the Contractor's Project Schedule accurately describes the progress of the Work and if the Project will be completed in accordance with the requirements specified in the Contract Documents. If Construction Contractor cannot maintain compliance with the time requirements specified in the Construction Contract Documents, the Engineer will actively work with the Construction Contractor to develop a recovery project schedule that allows for completion of the Construction Contract in accordance with the Construction Contract Documents. Should the Construction Contractor not comply with the schedule recovery requirements, the Engineer will provide recommendations to the MCA on a course of action. Any required notifications to the Construction Contractor will be prepared by the Engineer for MCA execution.

- (4) The Engineer shall coordinate and schedule regular progress meetings necessary for coordination and successful completion of the Construction Contract and shall visit the project site(s) at intervals appropriate to the stage

of construction to become familiar with the progress and quality of the work. The Engineer shall prepare agendas and sign-in-sheets two (2) days prior to the progress meeting and shall prepare minutes summarizing the meetings within two (2) days after the progress meeting. The Engineer will further determine if the work is being performed in accordance with the Construction Contract Documents. Unless the Engineer is also providing Inspection Services, the Engineer is not required to make exhaustive or continuous on-site inspections to check quality or quantity of the work.

- (5) When the Engineer is not providing Inspection Services, the Engineer shall recommend to the City and MCA the rejection of work that does not conform to the Construction Contract Documents. At any time during construction, the Engineer may be given the authority by the MCA to require additional inspection or testing of the work. When the Engineer is providing Inspection Services, the requirements for inspection will be pursuant to Task 6 for Inspection Services in this contract.
 - (6) The Engineer shall coordinate and schedule the Pre-Final Inspection for the Construction Contract upon the completion of work by the Construction Contractor in accordance with the Construction Contract Documents. The Engineer shall complete the Pre-Final Inspection with the Construction Contractor and the City's and the MCA's representatives and shall develop a punch list of all identified deficiencies or a Final Inspection Report if no deficiencies are identified. Deficiencies shall be items found to not comply with the Construction Contract Documents. Upon completion of the punch list items, the Engineer shall verify the completion of the punch list items and will then coordinate and schedule the Final Inspection with the Construction Contractor and the City's and the MCA's representatives. The Engineer shall then submit to the MCA a Certificate of Completion wherein it is stated that all work performed by the Construction Contractor was completed in accordance with the Construction Contract Documents.
 - (7) During the course of construction, the Engineer shall review and approve all warranties and guarantees submitted by the Construction Contractor. The Engineer shall then present the approved warranties and guarantees to the MCA for execution.
 - (8) The Engineer shall recommend to the MCA to beneficially occupy or begin operation and use of the facilities when the Construction Contractor has sufficiently completed work in accordance with the Construction Contract Documents as necessary to maintain continuous operations or service.
- s. Provide As-Built Services as authorized by MCA (and as outlined below):
- (1) Upon termination or completion of this Contract, the Engineer shall, at its expense, correct the original drawings, show all as-built changes based on

information from as-built field surveys, reflecting the actual construction of the project and shall furnish the MCA, without expense, electronic files on CD ROM in the latest AutoCAD version 2013 compatible with the City of Oklahoma City's current software and a PDF file in color. All written comments, changes or other markings on the final drawings must be highlighted in RED color.

- (2) Upon termination or completion of this Contract, the Engineer shall also furnish the MCA, without cost to the MCA, all basic calculations used in the design of the structures and original field notes on all land surveys, at which time Engineer shall receive the retained portion of its fee as provided in Exhibit B of this Contract.
- (3) The Engineer shall submit GPS permanent benchmark with as-built drawings.
- (4) For all building/facility projects, the Engineer shall provide to the OCEAT an Operations and Maintenance (O&M) Manual (three copies) covering all systems and equipment constructed, installed or remodeled as a part of the construction project.

t. Provide Inspection Services as authorized by MCA (and as outlined below):

- (1) The Engineer shall provide a qualified Inspector to perform the work identified within this task.
- (2) Prior to the advertisement for bids, prepare and submit to the MCA, for review and acceptance, a résumé showing the Inspector's experience and qualifications for this particular project. However, the MCA, through their review and acceptance, does not take any responsibility or liability for the Inspector or their work.
- (3) The Inspector will attend all pre-bid and pre-work conferences.
- (4) The Inspector shall perform inspection of all work under the Construction Contract.
- (5) The Inspector shall perform inspection of all materials received at the construction site and shall ensure that their storage is in accordance with all Construction Contract Requirements, manufacturer requirements and/or material labels.
- (6) Should work-in-progress or completed work be identified to not meet the requirements of the Construction Contract Documents, the Inspector shall immediately notify the Construction Contractor, the Engineer, and the City

and MCA if the Inspector believes the work does not conform to the contract documents.

- (7) The Inspector shall attend all job site meetings and shall report to the Engineer and the City and MCA all issues concerning progress, quality assurance, quality control and dispute resolution.
- (8) The Inspector shall maintain at a readily available location, a copy of all Construction Contract documents and other pertinent documents in an orderly manner including a current set of construction documents annotated to include all Construction Contract related changes and clarifications. The documents shall include, but not limited to, Construction Contract Documents, Requests for Information (RFIs) and the subsequent response to the RFI, Discrepancy and Nonconformance Reports, supplemental drawings, Engineer approved shop drawings, submittals, samples, and color schedules, correspondence, accepted schedules, construction change orders, amendments, logs, meeting minutes and a Construction Contractor directory.
- (9) The Inspector shall prepare and submit a Daily Inspection Report to the Engineer, the City and MCA and the Construction Contractor.
- (10) The Inspector shall maintain all shop drawings, project data, or samples in an easily retrievable filing system.
- (11) The Inspector shall maintain a daily log book or diary, recording all pertinent inspections, including but not limited to:
 - a. Inspector's time and activities;
 - b. Weather conditions at the site;
 - c. The nature and location of work being performed by the Construction Contractor;
 - d. Identification of any work that the Inspector believes fails to strictly conform to the contract documents, along with the Inspector's actions regarding such inspections;
 - e. Identification of any work determined to be nonconforming, along with the disposition of such nonconformance;
 - f. Copies of all reports made to the Construction Contractor of nonconforming work;
 - g. Description of all disputes among the Construction Contractor, Subcontractors and Suppliers; and
 - h. Description of how each dispute or nonconforming work is resolved.
- (12) The Inspector shall be present at the construction site while any critical installations and/or necessary testing will be required, is proceeding and shall provide inspection of the quality of construction on a regular and

consistent manner. The Inspector will have authority to act on behalf of the MCA only to the extent provided by this Contract. The Inspector is not responsible for creating or implementing the Construction Contractor's schedules nor for any failure by the Construction Contractor to perform its work in accordance with Construction Contract Documents.

(13) The Inspector shall pre-review the Contractor's pay application to reconcile pay quantities, review and sign the time of completion report, and initial the pay application.

(14) The Inspector may NOT (unless authorized by the MCA):

- a. Authorize deviations from the Construction Contract Documents.
- b. Conduct or participate in tests or third-party inspections.
- c. Assume any of the responsibilities of the Construction Contractor, subcontractors or suppliers.
- d. Expedite the work for the Construction Contractor.
- e. Advise or issue directions to the Construction Contractor concerning aspects of construction means, method, techniques, sequences or procedures, or safety precautions and programs in connection with the work.
- f. Authorize the MCA to beneficially occupy or begin operation and use of the facilities in whole or part.
- g. Reject work or require special inspection or testing.
- h. Order the Construction Contractor to stop the work or any portion thereof.

(15) The discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the project site, including but not limited to, asbestos, asbestos products, polychlorinated biphenyls (PCBs), lead, or other toxic substances is not the responsibility of the Inspector. If the Inspector has actual notice of such hazardous materials, he/she shall notify the City and the MCA immediately of its discovery.

Note: Both parties hereto expressly agree that the MCA expressly reserves the right, power, and authority to hire, contract, or consult with any other consultants and engineers for specific projects, including, but not limited to, those listed generally or specifically listed herein.

The Engineer agrees to have duly qualified personnel review, approve and sign all documents and work products.

3. **Assistance from the MCA.** Items to be furnished by the MCA pursuant to the terms of this Contract shall consist of, but not be limited to, the following:

- a. Adequate space for permanent storage of all project documents, including filing cabinets and flat files for project drawings.
 - b. Operational records and/or assistance in acquiring data.
4. **No Extra Work**. No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the MCA unless such work or service is first approved in writing by the MCA.
5. **Fees**. The Engineer shall be compensated for Direct Non-Salary Expenses and Professional Services. The Engineer may request and the MCA shall reimburse the Engineer for Direct Non-Salary Expenses at actual invoice cost. The MCA agrees to pay the Engineer, as compensation for such engineering services as listed herein, an amount equal to the actual payroll cost based on time card records for employees working on the project times a multiplier of 3.0 to cover overhead, indirect costs and profit. Payments for surveying services associated with this Contract shall be invoiced at the rate of \$175.00 per hour for use of a two (2) man crew to include transportation of equipment and materials, overhead and profit and all reports to be made. The invoices shall be prepared and submitted by the Engineer and be accompanied by all supporting data required by the MCA. Additionally, the invoices must be accompanied by a description of the position of the employee with the Engineer's, employee's hours expended and multiplier.
 - a. For Professional Services as outlined in paragraph 2. **Professional Services**, subparagraphs (a) thru (n) of this Contract, the Engineer shall be compensated for all associated Direct Non-Salary Expenses and for all Professional Services based upon the Engineering Fee Computation Formula.
 - b. For Professional Services as outlined in paragraph 2. **Professional Services**, subparagraphs (o) thru (t) of this Contract, the Engineer shall be compensated for all:
 - (1) Associated Direct Non-Salary Expenses; and
 - (2) Professional Services based upon the Engineering Fee Computation up to a limit of Six Hundred Fifty Thousand Dollars (\$650,000) annually for projects less than \$2,000,000 in estimated construction cost.
6. **Payment**. All claims for payment for services rendered under this Contract shall be accompanied by a detailed, itemized statement of charges claimed, and will be filed on claim forms furnished by the MCA. The statements shall include dates, the services rendered, the names of persons engaged thereon, the rates of pay, and copies of receipted invoices for expenses reimbursable under the terms of this Contract, and the statements shall be certified and executed by one of the authorized personnel of the Engineer. Claims submitted by the MCA docket deadline shall be considered by the MCA at the next regular meeting.

7. **Indemnity.** The Engineer will not be required to indemnify, insure, defend or hold harmless the MCA against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the MCA or their agents, representatives, subcontractors, suppliers or any other entity for whom the Engineer is not otherwise legally responsible.

The Engineer must indemnify the MCA against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Engineer and any person or entity for which the Engineer is legally responsible are adjudicated liable.

8. **Insurance.** Prior to approval of this contract, the Engineer shall obtain insurance coverage as provided below. The Engineer must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City and its participating trusts on a timely basis if requested by City staff. The Engineer will provide the Certificate(s) of Insurance to the City and its participating trusts with the executed contract (contract will not be processed for approval without the contract-required verification of insurance indicated on the Certificate(s) of Insurance). Certificate(s) of Insurance must be insurance industry standard forms, such as ACORD.

All insurance must be from responsible insurance companies which are authorized to do business in the state of Oklahoma and are acceptable to the City and its participating trusts. The required insurance coverage and policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Contract under any other provision of this Contract, including but not limited to any indemnification provision.

- A. **Additional Insureds:** All liability policies (except professional liability and worker's compensation and employer's liability policies) shall provide that the City of Oklahoma City and the Oklahoma City Water Utilities Trust are named additional insureds without reservation or restriction.

All insurance coverage of the Engineer shall be primary to any insurance or self-insurance program carried by the City and its participating trusts.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

Subrogation as to any additional insured shall be waived.

- B. Deductibles: All policies must be fully insured with any single policy deductible not exceeding \$25,000 per occurrence. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Engineer is stating a deductible does not exist and thus a deductible is not approved or accepted. If the Engineer's deductible is higher than declared, then the City and its participating trusts will hold an equal amount from pay claims until corrected.

Self-insured retentions will not be accepted unless accompanied by a bond (financial guarantee bond) or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Engineer's self-insured retention.

- C. Policy Limits: The insurance coverage and limits required of the Engineer under this Contract are designed to meet the minimum requirements of the City and its participating trusts. Such coverage and limits are not designed as a recommended insurance program for the Engineer. The Engineer alone shall be responsible for the sufficiency of its own insurance program. Should the Engineer have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, the Engineer should seek professional assistance.

Except for professional liability insurance, all policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Engineer shall also provide tail coverage that extends a minimum of two years from the expiration of this Contract.

The minimum aggregate limits of such insurance policies and continuing coverage shall be:

- (1) Worker's Compensation and Employer's Liability Insurance. The Engineer shall provide and maintain, during the term of the Contract, worker's compensation insurance as prescribed by the laws of the state of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the site of the Project, and in case any work is subcontracted, the Engineer shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Engineer. In the event any class of employees engaged in work performed under the Contract or at the site of the Project is not protected under such insurance heretofore mentioned, the Engineer shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.

- (2) Commercial General Liability Insurance. The Engineer shall provide and maintain commercial general liability insurance coverage sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, as provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (3) Automobile Liability Insurance. The Engineer shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

(4) Professional Liability Insurance. The Engineer shall provide and maintain professional liability insurance coverage in an amount not less than \$1,000,000 aggregate annual limit liability. Such insurance coverage shall be maintained during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the Trust.

- D. Certificates: The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by the Trust or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates have been provided to the City Engineer prior to execution of this Contract and are attached hereto. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the Project number and Project description or name.
- E. Cancellation. There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The Engineer authorizes the City and its participating trusts to confirm all information so furnished as to the Engineer's compliance with its bonds and insurance requirements with the Engineer's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Contract is a breach of this Contract for which the Engineer shall repay and reimburse all payment made under the Contract and such other damages, losses, and costs incurred by the City and its participating trusts. The City and its participating trusts may at their option suspend this Contract until there is full compliance with this paragraph, or may cancel or terminate this Contract and seek damages for the breach of this Contract. The remedies in this paragraph shall not be deemed to waive or release any remedy available to The City and its participating trusts. The City and its participating trusts expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit below the aggregate limit required to this contract, the Engineer shall immediately notify the City and its participating trusts and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City and its participating trusts request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit below the aggregate limit required by this contract, the Engineer hereby agrees to promptly authorize and have delivered to the City and its participating trusts such statement.

The Engineer must carry and maintain the contract-required insurance coverages and may not cancel, fail to be renewed, nor decrease their limits without thirty (30) days written notice to the City and its participating trusts. In the event that a contract-required insurance coverage (policy) is canceled by the Engineer's insurance company and through no fault of the Engineer, the Engineer must

immediately provide written notice to the City and its participating trusts and immediately provide properly executed Certificate(s) of Insurance evidencing coverage (policy) replacement of the canceled coverage(s). The Certificate(s) of Insurance must specifically indicate (in the remarks section of the form or elsewhere) the project number and project description. An authorized representative of the insurance companies listed on the Certificate(s) of Insurance must sign the Certificate(s).

- F. Duration of Coverage. All insurance coverage required under this Contract except professional liability insurance shall be maintained in full force and effect until completion and formal acceptance of the Project by the City and its participating trusts. The Engineer shall maintain in full force in effect the required professional liability insurance stated above during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the City and its participating trusts.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Contract.

- G. The Engineer and its insurer will not be required to indemnify, insure, defend or hold harmless the MCA against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the MCA or their agents, representatives, subcontractors, suppliers or any other entity for whom the Engineer is not otherwise legally responsible.

The Engineer and its insurer must indemnify the MCA against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Engineer and any person or entity for which the Engineer is legally responsible are adjudicated liable.

9. Termination for Convenience. The MCA may terminate this Contract (with or without cause), in whole or in part, for the MCA's convenience. The MCA may terminate by delivery of a notice to the Engineer, pursuant to paragraph "Notices" herein.

Upon receipt of the notice of termination, the Engineer shall (1) immediately discontinue all work and services affected (unless the notice directs otherwise), and (2), upon notice for work performed, deliver to the MCA all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated in performing this Contract, whether complete or incomplete unless the notice directs otherwise.

Upon termination for the convenience by the MCA, the MCA shall pay the Engineer for all work and services rendered, up to the time of the notice of termination, in accordance

with the terms, limits and conditions of this Contract and as further limited by the not to exceed amounts set out in this Contract.

The rights and remedies of the MCA provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

Termination herein shall not terminate or suspend any of the required provisions of paragraph "Indemnity" or "Insurance" of this Contract.

10. **Prohibition Against Contingent Fees.** The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Contract, and that it has not paid for agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift or any other compensation, contingent upon or resulting from the award or making of this Contract.
11. **Ownership of Documents.** All documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, and any other materials produced, created or accumulated in performing this Contract, are and shall remain the property of the MCA and may be reproduced, distributed and published in whole or part without permission or any additional payments or fees to the Engineer. Reuse of said documents by the MCA shall be at the MCA's risk and responsibility and not that of the Engineer. The parties may use any portions of said documents at their own risk and responsibility. During preparation of design documents, the Engineer shall do weekly backups of CADD computer files and maintain said backups in a safe and secure off-site location. These back up CADD computer files are the property of the Engineer.
12. **Notices.** Notices hereunder shall be deemed sufficient if posted, return receipt requested, to the parties at the addresses below or at such addresses as may from time to time be designated by the parties.

To the MCA:
McGee Creek Authority
Chris Browning, General Manager
420 West Main Street, Suite 500
Oklahoma City, Oklahoma 73102

To the Engineer:
Smith Roberts Baldischwiler, LLC
100 NE 5th Street
Oklahoma City, OK 73102
Attn: Marc Long
Phone Number: 405-840-7094

13. **Stop Work.** Upon notice to the Engineer, the MCA may issue a stop work order suspending the performance of work and/or services under this Contract. The stop work order shall not terminate or suspend any of the required provisions of paragraph “Indemnity” and/or “Insurance” of this Contract.
14. **Compliance with Laws, Ordinances, Specifications and Regulations.** The Engineer shall comply with all existing and applicable federal, Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, applicable to the work and/or services provided by this Contract. All work product provided by the Engineer must comply with and provide for compliance with all Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto in the use of the work product of the Engineer. All work product provided by the Engineer must specifically direct and must provide sufficient information and contacts for the Construction Contractor to timely comply with all Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations, and all amendments and additions thereto, in the use of the work product of the Engineer and timely performance by the Construction Contractor.
15. **Records and Accounts.** During the term of this Contract and continuing for a period of five (5) years after the final acceptance of the completed project by the MCA, or until the final resolution of any outstanding disputes between the MCA and the Engineer or the contractor(s) on the project, the Engineer shall maintain: all documents, notes, drawings, specifications, reports, estimates, summaries, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract that have not been submitted to the MCA subsequent to final completion of the project and its internal accounting records, and other supporting documents pertaining to the claims and/or invoices for costs of work and/or services of this Contract. The Engineer must maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Engineer shall permit periodic audits by the MCA and the MCA's authorized representative. The periodic audits of the records in support of claims and invoices for the Contract shall be performed at times and places mutually agreed upon by the MCA and Engineer. Agreement as to the time and place for audits may not be unreasonably withheld.
16. **Reporting to the Authority.** The Engineer shall report to the MCA on a regular monthly basis and on an as needed basis.
17. **Prohibition Against Collusion.** The Engineer warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Engineer to solicit or secure this Contract. The Engineer further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. In addition, the Engineer must execute the Anti/Non-Collusion Affidavit, attached as Exhibit C, prior to the effective date of this Contract.

18. **Sub-consultant, Subcontractor or Employee Conflict of Interest.** Any work performed by the Engineer's employees, sub-consultants or subcontractors on this project shall prohibit said persons from contracting with, working for, or otherwise assisting any potential Bidder to do any project-related work for the Bidder which may in any way be (or construed to be) a conflict of interest. It is the responsibility of the Engineer to require all employees, sub-consultants, or subcontractors engaged by the Engineer to advise the MCA of any business relationship (formal or otherwise) which may pertain directly or indirectly to this project and/or which may in any way be (or construed to be) a conflict of interest. The Engineer will also notify the MCA of any such business relationship and/or conflict of interest. Any conflict of interest discovered by the MCA may be cause for rejection of the Bid in question and/or cancellation of the Engineer's contract.
19. **Work Orders.** A project-specific work order will be written upon receipt from the Engineer the project proposal, time for completion, and estimate of cost for services to be performed. The services of the Engineer are to commence upon the date set out in the work order issued by the MCA, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of this Joint Contract. If the Engineer cannot perform the work and/or services within the time provided, and upon the submission by the Engineer of a request in writing to the MCA, indicating the length of extension required to perform a task, the MCA may, at their sole discretion, grant a reasonable extension of time. The request from the Engineer shall state the reason for the extension request, along with evidence showing that the Engineer is unable to complete this work in the time specified in the Work Order for reasons beyond its control. The Engineer is prohibited from claiming damages for delays and extensions of time.
20. **References Not Incorporated.** The use of language or definitions from the Federal Acquisition Regulations ("FAR"), the American Institute of Architects ("AIA") or any other publication, are not intended to adopt by reference or otherwise any or all of the language, definitions, regulations or publications or any interpretation thereof.
21. **Standard of Care.** In providing the work and services herein, the Engineer shall maintain during the course of this Contract the standard of reasonable care, skill, diligence and professional competency for such work and/or services. The Engineer agrees to require all of its consultants, by the terms of its consultants' contracts, to provide services at the same standard of expert care, skill, diligence and professional competence required of the Engineer.
22. **Estimated Construction Cost.** If the lowest and best Bid proposed in response to the solicitation of Bids for construction of the project, in accordance with the Bidding Documents provided by the Engineer, exceeds the Estimated Construction Cost or funds available for this project, the Engineer, at no increase or additional cost to the MCA shall redesign the project and redraft the Bidding Documents so that the construction Bids pursuant to a subsequent solicitation come within the Estimated Construction Cost.

23. **Design Corrections.** The Engineer agrees to make any necessary corrections to the designs, drawings, specifications or other documents, work or services furnished, when such documents or services contain any errors, deficiencies or inadequacies caused by the Engineer, at no cost to the MCA. The Engineer further agrees to be liable for any damages caused by its negligence and/or the negligent failure to timely discover and/or make such necessary corrections. The Engineer is not relieved of liability for design errors, deficiencies or inadequacies undiscovered by the MCA upon its review or inspection, nor is the Engineer relieved from liability for the MCA's lack of review or inspection of said documents.
24. **Backup Required.** In accordance with good engineering practices, the Engineer must back up all data, surveys, tests, work, plans, specifications, notes, calculations, RFI, records, reports, documents (collectively referred to as "data") in the form of an electronic file on a USB drive, data storage, or to an offsite electronic storage facility. Should any data become lost, corrupted, inaccessible, or unusable (collectively "loss"), the Engineer must timely recreate all data within the original time frame of the engineering contract at its sole cost. No extensions or additional time will be granted the Engineer for loss of data. No additional payment or reimbursement will be made to the Engineer for loss of data. The Engineer will be responsible for any and all costs, expenses, or lost opportunities incurred by MCA, and construction contractor resulting from the failure to meet schedules, milestones, performance standards, or performance requirements related to loss of data.
25. **Notice of Design Limitations.** The Engineer will immediately advise the MCA at any time it believes that the project being designed will exceed, or is likely to exceed, the allocated cost for construction as set forth in this Contract.
26. **Sub-consultants.** The Engineer agrees to submit for approval by the MCA, prior to their engagement, a list of any sub-consultants or subcontractors the Engineer intends to engage to perform work and/or services and the scope of work and/or services to be performed related to this Contract. Such approval of subcontractors and sub-consultants and scope of work and/or services to be performed will not be unreasonably withheld. The Engineer must notify the MCA and seek pre-approval of any substitutions or changes in sub-consultants or subcontractors and changes in the subcontractor or sub-consultant's scope of work and services related to this Contract. Approval of subcontractors or sub-consultants or their work and services will not relieve or release the Engineer from responsibility or liability to perform all work and services under this Contract and will not create any responsibility, liability or duty upon the MCA as to the selection of or work and services provided by the subcontract or sub-consultant under this Contract.
27. **Nondiscrimination.** In connection with the performance of work and/or services under this Contract, the Engineer agrees as follows:
- A. The Engineer shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2).

The Engineer shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3 (2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Engineer shall agree to post, in conspicuous places, Exhibit D.

- B. In the event of the Engineer's noncompliance with this nondiscrimination clause, this Contract may be suspended, canceled or terminated by the MCA. The MCA may declare the Engineer ineligible for further contracts or agreements until compliance, and/or 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 Contract. The Engineer shall also execute the nondiscrimination certificate, attached and incorporated as Exhibit D, prior to the effective date of this Contract.

28. Assignment. Inasmuch as this Contract is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the Engineer to provide professional and personal services to the MCA, the parties agree that the Engineer may not assign its obligations, rights or interest in this Contract except the assignment of subcontractors and sub-consultants as set forth in paragraph "Termination for Default" subparagraph B.

29. Termination for Default. The MCA may terminate or cancel this Contract for cause, in whole or in part, for failure of the Engineer to fulfill in accordance with good engineering practices and in the best interests of the MCA or to promptly fulfill its obligations under this Contract.

- A. After due default notice and thirty (30) days within which to correct the default, this Contract may be terminated by the non-defaulting party upon written notice. Upon termination for cause by the MCA, the MCA shall pay the Engineer for all work and services completed in accordance with good engineering practices and in the best interests of the MCA and useable by the MCA for the project(s) from the date of the Notice to Proceed, up to the time of the effective date of termination.
- B. If this Contract is terminated by reason of a default of the Engineer prior to the completion of this project, regardless of the reason for said termination, the Engineer shall immediately assign to the MCA any contracts and/or agreements relative to this project entered into between the Engineer and its subcontractors and sub-consultants, as the MCA may designate in writing and with the consent of the subcontractors and sub-consultants so designated. With respect to those contracts and/or agreements assigned to and accepted by the MCA, the MCA shall only be

required to compensate such subcontractors and sub-consultants for compensation accruing to such parties under the terms of their agreements with the Engineer from and after the date of such assignment to and acceptance by the MCA. All sums claimed by such subcontractors or sub-consultants to be due and owing for services performed prior to such assignment and acceptance by the MCA shall constitute a debt between the Engineer and the affected subcontractors or sub-consultants, and the MCA shall in no way be deemed liable for such sums. The Engineer shall include this provision and the MCA's rights and obligations hereunder in all agreements or contracts entered into with the Engineer's subcontractors and sub-consultants.

C. Termination herein shall not terminate or suspend any of the required provisions of the paragraph "Indemnity" or "Insurance" of this Contract.

30. **Time Is of the Essence.** Both the MCA and the Engineer expressly agree that time is of the essence with respect to this Contract, and the time for performance of each task established by the work orders shall be made a part of this Contract and shall be strictly observed and enforced. Any failure on the part of the MCA to timely object to the time of performance shall not waive any right of the MCA to object at a later time.
31. **No Damage for Delay.** No payment, compensation or adjustment of any kind (other than an approved extension of time) shall be made to the Engineer for damages because of hindrances or delays from any cause in the progress of the work, whether such hindrances or delays be avoidable or unavoidable. The Engineer agrees that it will make no claim for compensation or damages for any such delays and will accept as full satisfaction for such delays the extensions of time.
32. **Severability.** In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Contract.
33. **Entire Agreement.** This Contract, including its Exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of the MCA and the Engineer concerning the Contract. Neither the MCA nor the Engineer has made or shall be bound by any agreement or any representation to the other concerning this Contract which is not expressly set forth herein.
34. **Amendment.** This Contract may be modified only by a written amendment of subsequent date hereto, approved by the MCA and the Engineer. In the event the Engineer's Basic Services are increased or changed so as to materially increase the need for engineering services in excess of the not to exceed total compensation, the Engineer may seek to amend this Contract.
35. **Execution in Counterparts.** This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

36. **Descriptive Headings.** The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Contract.
37. **Construction and Enforcement.** This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.
38. **Survival of Representations.** All representations and covenants of the parties shall survive the expiration of the Contract.
39. **Parties Bound.** This Contract shall be binding upon and inure to the benefit of all parties. This Contract is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.
40. **Venue of Actions.** The parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the District Court of Oklahoma County.
41. **Effective Date.** Not used for this Contract.
42. **Local Business Utilization Report.** On December 22, 2020, the City Council approved and re-established the Small and Disadvantaged Local Business Utilization (LBU) Program. The program encourages and promotes the use of small and disadvantaged local business subcontractors on public construction contracts. The goal is to provide assistance, guidance, and opportunities for small and disadvantaged local businesses to work on MCA projects.
The Engineer agrees to submit a Local Business Utilization ("LBU") Report to the City within fourteen (14) days of the issuance of the Notice to Proceed, to include the following information:
- A. A list identifying each of its subconsultants or subcontractors;
 - B. The location of the principal place of business of each subconsultant or subcontractor;
 - C. The status of each subconsultant or subcontractor as local, small, disadvantaged, minority or otherwise;
 - D. The general scope of work to be performed by each subconsultant or subcontractor; and
 - E. The dollar amount of each subcontract.

The Engineer further agrees to submit to the MCA a monthly report identifying the amount of payments made to each subconsultant or subcontractor for the preceding month on a form provided by the MCA.

43. **Crime Prevention through Environmental Design** The Crime Prevention through Environmental Design (CPTED) concept suggests that natural surveillance, natural access control, and territoriality can be effectively applied to a project and its surrounding environment to provide safety for users. A CPTED design can also promote community confidence and improve natural surveillance methods to reduce/prevent common crime and vandalism.

The Engineer should implement the concepts of CPTED, where appropriate, to reduce the real and perceived areas of potential problems during the project design.

44. **Disclosure.** The Engineer may not disclose to personnel (outside of the MCA or City) any information related to water and/or sewer systems which is proprietary in nature and which may be used for unauthorized purposes.

45. **Final Payment.** Upon cancellation or termination hereof, the MCA will pay the Engineer all fees earned up to the date of cancellation or termination, and the Engineer will turn over to the MCA all documents in his possession pertaining to the services rendered hereunder to include, but not limited to, all original tracings, all basic calculations used in the designs, and all original field notes and land surveys, which shall be the property of the MCA by terms of this Contract.

46. **Non-disclosure.** Neither the Engineer nor its employees, agents or representatives shall release or disclose any documents or information to a third party without the prior approval of the General Manager. The Engineer and its employees, agents and representatives shall comply with the procedures, restrictions, and requirements resulting from the vulnerability assessment performed by the MCA and/or the City for the protection of the Oklahoma City water, wastewater, and recycled water systems. The Engineer shall not under any circumstances reveal any of the information or documents in the Vulnerability Assessment or any addition or amendment thereto.

47. **Term.** The term of the contract will be for a period of three (3) years and will prohibit the firm from submitting Letters of Interest on MCA projects during the term of this contract. The contract may also be renewed after the initial term with a maximum of two renewals with each renewal for a one-year period.

48. **Term of Contract.**

A. This Contract authorizes the City Engineer to issue Work Orders under this Contract during the contract term as provided herein and the term of this Contract will be from the effective date through December 31, 2026, plus such extended time as necessary until all Work Orders issued during the contract term are complete.

- B. The MCA may issue Work Orders under this Contract at any time during the contract term.
- C. The Engineer will provide such services as set forth in any Work Order issued under this Contract and this Contract will be deemed extended for such extended time as may be necessary for the completion of services set forth in any Work Order issued during the contract term under this Contract.
- D. If this Contract is extended for completion of any Work Order, upon completion of all the Work Orders issued under this Contract, the City Engineer will issue a notice to the Engineer denoting the termination of this Contract and any extended time.
- E. The Engineer must provide such services and comply with this Contract until expiration of the contract term or through any extended time, if any, until notification of termination of this Contract from the City Engineer, whichever is later.
- F. The City will not be obligated to pay the Engineer under any Work Order (including any services, expenses, and additional services) until the funds have been encumbered. Any Work Order must not exceed the available funds for the year in which the Work Order was issued. Any extended time to complete the Work Order will not change the available funds for the year in which the Work Order was issued.
- G. If the MCA should need any additional services or a change of the scope of services in any Work Order issued during the contract term, a new separate Work Order must be issued under a separate contract or an amendment to this Contract. An extended time will not extend the authorization to issue a new Work Order under this Contract after the expiration of the contract term.

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RATIFIED AND APPROVED by the McGee Creek Authority and signed by the Chairman this 14 day of March, 2024

ATTEST:


Secretary


MCGEE CREEK AUTHORITY
OFFICIAL SEAL
OKLAHOMA

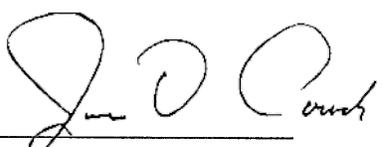

Chairman

CONCURRED by the Oklahoma City Water Utilities Trust and signed by the Chairman this 26TH day of MARCH, 2024

ATTEST:

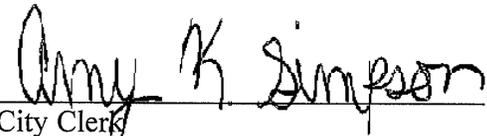

Asst. Secretary


OKLAHOMA CITY
WATER UTILITIES TRUST
OFFICIAL SEAL
OKLAHOMA


Chairman

CONCURRED by the City of Oklahoma City this 9TH day of APRIL, 2024

ATTEST:


City Clerk


THE CITY OF OKLAHOMA CITY
SEAL OF THE CITY OF OKLAHOMA CITY


David Holt

REVIEWED for form and legality.


Patricia Mann
Assistant Municipal Counselor

EXHIBIT A
PROJECT NO. WMC0TE
INDEPENDENT ENGINEER TO SERVE THE MCGEE CREEK AUTHORITY

In addition to the Professional Services outlined in Paragraph 2, the Engineer hereby agrees that it will perform the following services required for the development and implementation for consulting services.

1. CONSULTING SERVICES

1.a. Prepare preliminary and detailed studies, cost estimates and feasibility reports as required.

1.b. Perform services related to design, bid, construction administration, inspection, and as-built services for projects required for the respective trusts/authority systems. This shall be limited to projects where the total fee does not exceed \$650,000 annually for projects less than \$2,000,000 in estimated construction cost.

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**EXHIBIT B
RATE SCHEDULE
PROJECT NO. WMC0TE
INDEPENDENT ENGINEER TO SERVE THE MCGEE CREEK AUTHORITY**

The MCA agrees to pay the Engineer for work assigned as compensation for professional engineering services at the following hourly rates for services outlined in Exhibit A.

Personnel Classification	Approved Hourly Rate
Principal In Charge	\$295
Engineering Manager	\$240
Survey Project Manager	\$230
Project Manager	\$200
SR. Engineer	\$160
Staff Engineer	\$140
Engineer Intern	\$110
Design Technician	\$115
SR. CADD Technician	\$110
CADD Technician II	\$100
CADD Technician I	\$75
Drone Operator	\$125
Utilities Coordinator	\$125
R/W Specialist	\$115
Construction Administrator	\$150
Construction Inspector	\$105
Office Clerical	\$65

COST ADJUSTMENT TERMS

Hourly bill rate(s) shall remain firm throughout the first twelve months of the contract period. At the Consultant's request and upon written approval from the Trust, hourly bill rates can be adjusted annually based on the year-over-year increase or decrease in the U.S. Bureau of Labor's Consumer Price Index, South Region. To find the CPI-U (South Region, All Urban Consumers),

go to www.bls.gov/cpi. Charts are available on this website to show CPI for the previous 10 years.

For purposes of calculating an adjustment for the ensuing year, the base rate for the adjustment shall be the Target unit cost and labor rates in effect on the last day of the previous twelve months of the Agreement. Adjustments to the unit prices will be made only in units of one cent (\$0.01).

Cost adjustments are calculated in the following manner:

New Unit Price = Existing hourly bill rate(s) * (((CPI_{In} – CPI_{Io})/CPI_{Io}) + 1)

Where, CPI_{In} = Consumer Price Index-U (All Urban Consumers), South Region, all items for the calendar month and year of the adjustment.

CPI_{Io} = Consumer Price Index-U (All Urban Consumers), South Region, all items for the previous calendar month and year.

A valid written request consists of the following:

- Letter requesting price increase(s) must be submitted on your company letterhead along with the combined CPI_{In} and CPI_{Io} chart from www.bls.gov/cpi.
- Signed by an officer or someone authorized to execute contracts on company's behalf
- Reference the assigned contract number
- Reference the title of the contract
- Must be submitted to: The City of Oklahoma City, Utilities Department, Engineering Division, 420 W. Main Street, Ste. 500, Oklahoma City, OK 73102. Requests emailed to ocwut-support@okc.gov are acceptable.

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SMITBAL01C

MSCHURIG

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/15/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 1017969 INSURICA 5100 N. Classen Blvd, #300 Oklahoma City, OK 73118	CONTACT NAME: Michelle Schurig PHONE (A/C, No, Ext): (405) 556-2217 FAX (A/C, No): (405) 556-2332 E-MAIL ADDRESS: Michelle.Schurig@INSURICA.com
INSURER(S) AFFORDING COVERAGE	
INSURED	NAIC #
Smith-Roberts Baldischwiler LLC 100 NE 5th Street Oklahoma City, OK 73104	INSURER A : Continental Casualty Company 20443 INSURER B : Continental Insurance Company 35289 INSURER C : National Fire Insurance Co. of Hartford 20478 INSURER D : Hamilton Insurance DAC INSURER E : INSURER F :

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	6079846635	12/18/2023	12/18/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 EMPLOYEE BENE \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	6079846649	12/18/2023	12/18/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			6079846618	12/18/2023	12/18/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	WC679846621	12/18/2023	12/18/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liab			EOHS214383	1/1/2024	1/1/2025	Per Occ/Aggregate \$ 2,000,000
B	Property	X		6079846635	12/18/2023	12/18/2024	Valuable Papers \$ 100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Project No. WMC0TE - The Certificate holder, The Southern Oklahoma Development Trust, The City of Atoka, The County of Atoka, the Oklahoma City Water Utilities Trust, and the City of Oklahoma City, are to be shown as additional insured and include a waiver of subrogation under the General Liability, Auto Liability. The City of Oklahoma City and any of its participating public trusts are named as loss payees on the valuable papers insurance policy for this project, per the written contract.

The Professional Liability contains a \$25,000 per claim deductible. General Liability - No Deductible; Auto Liability - No Deductible; Valuable Papers and Records - \$5,000 Deductible.

CERTIFICATE HOLDER**CANCELLATION**

McGee Creek Authority Chris Browning, General Manager 420 W. Main St., Suite 500 Oklahoma City, OK 73102	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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