

## PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“PSA”) is made and entered into as of this 13th day of September, 2022, by and between the Oklahoma City Water Utilities Trust (“OCWUT” or “CONTRACTING ENTITY”), a public trust organized pursuant to the laws of the State of Oklahoma, and Jacobs Engineering Group Inc. (“SERVICE PROVIDER”).

### WITNESSETH:

**WHEREAS**, Oklahoma City owns and operates and OCWUT leases and finances its solid waste, water and wastewater systems, also including related computer facilities and systems; and

**WHEREAS**, the CONTRACTING ENTITY prepared a Request for Proposal (“RFP”) for OCWUT 01-22 Risk and Resilience Assessments, Emergency Response Plan, and Business Continuity Plan; and

**WHEREAS**, the SERVICE PROVIDER provided written proposal(s) to the RFP meet the service requirements, business process needs and efficiencies described by the CONTRACTING ENTITY; and

**WHEREAS**, the SERVICE PROVIDER represented itself as being qualified, experienced, and staffed with sufficient trained personnel, possessing the specialized methodologies and practices necessary to fulfill the professional and technical services requirements described in the CONTRACTING ENTITY’S RFP and CONTRACTING ENTITY relied on those representations; and

**WHEREAS**, the SERVICE PROVIDER possesses the skills, experience and expertise as exhibited by the SERVICE PROVIDER’s Key Team members; and

**WHEREAS**, SERVICE PROVIDER will provide such SERVICES, SOLUTIONS and DELIVERABLES in accord with this PSA; and

**WHEREAS**, SERVICE PROVIDER has agreed to perform SERVICES, and deliver the SERVICES, SOLUTION and DELIVERABLES required by this PSA; and

**WHEREAS**, the CONTRACTING ENTITY desires to retain the SERVICE PROVIDER as an independent contractor, and SERVICE PROVIDER has agreed to fulfill the enumerated duties and responsibilities provided for in this PSA; and

**WHEREAS**, the PARTIES have negotiated and developed this PSA.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the PARTIES hereto, the PARTIES hereby agree as follows:

### **1. Definitions**

a) The term “ADDITIONAL SERVICES” means those services requested via the CHANGE CONTROL PROCESS.

b) The term “BUSINESS DAYS” means the days that the City of Oklahoma City conducts its business in the regular course, excluding weekends and designated Oklahoma City holidays.

c) The term “BUSINESS PROCESS INTEGRATION” means how OKC-Utilities, OKC-IT and SERVICE PROVIDER work together (integrate) to deliver business control, ongoing improvement, and increased operational efficiencies of the SOLUTION.

d) The term “CHANGE MANAGEMENT” refers to the assessing, filtering, prioritizing, and managing requests for changes to Attachment A – Scope of Services .

e) The term “CHANGE REQUEST” means a written documented proposal to revise the manner in which contracted work will be performed due to a changed condition during the course of the work. THE SERVICES and/or SOLUTION defined in this PSA may need to be revised or adapted to better satisfy CONTRACTING ENTITY’s needs as mutually and prudently determined by the PARTIES during the course of completing the work. A CHANGE REQUEST process shall be performed in accordance with the PSA and administered by the respective Project Managers of CONTRACTING ENTITY and SERVICE PROVIDER.

f) The term “CHANGE CONTROL PROCESS” means the procedures used to process documented proposed changes in the key activities and personnel for the SERVICE PROVIDER and CONTRACTING ENTITY related to estimation, approval and delivery of CHANGE REQUESTS (See Service Provider Scope of Services for a description of the CHANGE CONTROL PROCESS) relying on the unit pricing in the RATE CARD included in “Attachment B - Linear Responsibility and Schedule of Fees”.

g) The term “PSA” refers to this PROFESSIONAL SERVICES AGREEMENT and its associated attachments and exhibits.

h) The term “COSTS” means the financial measure for dollars expended for use of resources and SERVICES.

i) The term “DELIVERABLE” refers to a tangible or verifiable outcome, result, or item that will be produced by SERVICE PROVIDER or CONTRACTING ENTITY or by SERVICE

PROVIDER and CONTRACTING ENTITY for the benefit of CONTRACTING ENTITY as part of this PSA; such DELIVERABLES are further designated, described and accountability assigned in the CONTRACT.

j) The term “DOCUMENTATION” means any and all, documents developed, reports, information, e-mails, agenda, training materials, guides, commentary, listings and other materials for use in conjunction with the SOLUTION or DELIVERABLES, which are to be developed and/or supplied by or with SERVICE PROVIDER or CONTRACTING ENTITY or by or with SERVICE PROVIDER and CONTRACTING ENTITY.

k) The term “ESCALATION” refers to the timing of escalations to higher responsible personnel of the respective PARTIES to facilitate proper and efficient resolution of issues.

l) The term “FINAL ACCEPTANCE” refers to acknowledgement from the CONTRACTING ENTITY that SERVICES and DELIVERABLES have been reviewed and approved by the CONTRACTING ENTITY.

m) The term “FORCE MAJEURE” means circumstances which are outside of the PARTY’S reasonable control to prevent, including but not limited to war, acts of terrorism, strike, lock-out, industrial dispute, fire, explosion, natural disaster, flood, work stoppages or work shortages (save in relation to work stoppages or work shortages of either PARTY), transportation strikes or slowdowns, hurricane, tornado, power outages, fuel shortages, acts of government, illness, pandemics, epidemics, and death.

n) The term “KEY USERS” means CONTRACTING ENTITY provided personnel to assist SERVICE PROVIDER as provided for in the PSA.

o) The term “MAIN WORKING DAY” are between the hours of 07:00 and 18:00 CST/CDT (Central US) time, Monday through Friday (with the exception of Oklahoma City designated holidays).

p) The term “MAINTENANCE OF THE KNOWLEDGE BASE” refers to the requirement that the SOLUTION must be documented in full.

q) The term “MILESTONE” refers to an event in “Attachment A - Scope of Services” usually associated with completion of a specified DELIVERABLE or series of DELIVERABLES as shown in “Attachment B - Linear Responsibility and Schedule of Fees”.

r) The term “PARTY” means SERVICE PROVIDER or CONTRACTING ENTITY, and the term “PARTIES” shall mean SERVICE PROVIDER and CONTRACTING ENTITY.

s) The term “RATE CARD” means an approved unit pricing for provision of increments of ADDITIONAL SERVICES for use to document total fees in a CHANGE REQUEST reviewed through the CHANGE CONTROL PROCESS outside the estimated resource levels if approved in writing by CONTRACTING ENTITY and delivered by SERVICE PROVIDER.

t) The term “RELEASE MANAGEMENT” means planning the roll out and release of changes in a controlled manner.

u) The term “REVIEW PROCESS” refers to the actual effort against planned effort to be reviewed on a monthly basis, or more often if the PARTIES determine it appropriate, in meetings between the SERVICE PROVIDER Project Manager and the CONTRACTING ENTITY Project

Manager; this process will take into account the following: Actual effort, Estimated effort, SERVICE events (development and other changes), Business Events, and External Events.

v) The term “SECURITY & AUTHORIZATIONS” refers to service including the provision of user access, creation/modification of roles, security governance and audit to provide compliance with Segregation of Duties and other legislative standards.

w) The term “SERVICE ESCALATION” refers to the process in the event the SERVICE PROVIDER and CONTRACTING ENTITY fail to resolve an issue, CONTRACTING ENTITY may escalate the issue as follows:

- i. First Escalation Point: Project Manager;
- ii. Second Escalation Point: Manager of Projects;
- iii. Third Escalation Point: Principal in Charge.

x) The term “SERVICE GOVERNANCE MODEL” means the documented roles and responsibilities of each PARTY, compliant with the PSA requirements, used to guide the PARTIES actions in facilitating effective coordination, decision making and fulfillment of the SERVICES and delivery of the SOLUTION.

y) The term “SERVICE HANDOVER” refers to a process tasked with facilitating handover to the business (stability of release) and service (supportability of the release) on pre-agreed checklists and plans of new developments released to the business (on any scale) for formal production acceptance.

z) The term “SERVICES” refers to any and all professional and technical labor work efforts provided or to be provided by SERVICE PROVIDER as designated and described in this PSA.

aa) The term “SOLUTION” “SOLUTIONS” means the SERVICE delivered by the SERVICE PROVIDER and accepted by the CONTRACTING ENTITY for use as provided for in this PSA.

bb) The term “SERVICE PROVIDER” includes Jacobs Engineering Group Inc., its employees, representatives, agents, consultants, officers and CONTRACTORS.

cc) The term "WORK PRODUCT" means any item (tangible or intangible) which is created or produced as a result of any SERVICES by SERVICE PROVIDER. For the sake of clarity, the term “WORK PRODUCT” does not include any items that are considered to be derivative works of intellectual property owned by SERVICE PROVIDER or pre-existing intellectual property owned by SERVICE PROVIDER.

## **2. Representations**

The PARTIES have incorporated descriptions and details from the RFP, the RFP Proposal, and other oral and written communications and representations of the PARTIES into this PSA to provide the SOLUTION required by the PSA to CONTRACTING ENTITY.

### 3. Prioritization

In the event of any inconsistency between or among this PSA and the attachments, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

Included in this Professional Services Agreement;

Attachment A - Scope of Services;

Attachment B - Linear Responsibility and Schedule of Fees

Attachment C - SERVICE PROVIDER's Key Team Members

Attachment D – Performance Bond (SERVICE PROVIDER shall provide executed version of this Performance Bond form within (10) business days of the execution date of PSA, which shall be incorporated into PSA without further action by the parties)

Attachment E - Insurance Certificate

Attachment F – Reserved

### 4. Retention of SERVICE PROVIDER; Scope of Work

- a) Subject to the terms and conditions of this PSA, CONTRACTING ENTITY retains SERVICE PROVIDER to perform the SERVICES hereunder, to deliver the SOLUTION, and to meet CONTRACTING ENTITY's requirements as provided for in this PSA.
  - i) This PSA and the attachments, govern the manner SOLUTION, SERVICES, WORK PRODUCTS, DOCUMENTATION, and DELIVERABLES shall be provided by SERVICE PROVIDER to CONTRACTING ENTITY. The completed insurance certificates shall be provided by the SERVICE PROVIDER prior to provision of any SERVICES identified in this PSA. Failure to timely provide insurance certificate does not extend time or deadlines. The completed insurance certificates, when submitted by the SERVICE PROVIDER shall be incorporated into this PSA by reference and replace the unexecuted, uncompleted forms initially provided by CONTRACTING ENTITY for use by SERVICE PROVIDER to comply with that requirement.
  - ii) The designated Project Managers of the PARTIES are hereby empowered to perform all the functions identified for them in this PSA including but not limited to

processing and approving CHANGE REQUESTS to the Scope of Work during the completion of the PSA. However, CHANGE REQUESTS that would increase the compensation due SERVICE PROVIDER shall be presented and be subject to review and approval of both PARTIES. Each CHANGE REQUEST for ADDITIONAL SERVICES must be approved by the OCWUT General Manager in writing and accompanied by and OCWUT purchase order to be effective.

- b) SERVICE PROVIDER shall ensure that SERVICE PROVIDER DELIVERABLES are complete when provided to CONTRACTING ENTITY for final review. SERVICE PROVIDER's DELIVERABLES shall be reviewed by CONTRACTING ENTITY when they are completed and submitted to the CONTRACTING ENTITY Project Manager in accordance with this PSA. CONTRACTING ENTITY or its Project Manager shall notify SERVICE PROVIDER of its acceptance or rejection of any such SERVICE PROVIDER DELIVERABLES for identified deficiencies. The PARTIES shall work in a collaborative manner to prepare DELIVERABLES and CONTRACTING ENTITY agrees to complete its reviews timely and acceptance shall not be unreasonably withheld for minor deficiencies. Any rejection and notification of material deficiency shall specifically state the manner any component of the SERVICES, is materially deficient. In the event of such rejection, SERVICE PROVIDER shall re-perform such SERVICES, correct any material deficiencies, and resubmit such SERVICE PROVIDER DELIVERABLE or other SERVICES in accordance with the PSA for appropriate review and acceptance by CONTRACTING ENTITY. Each PARTY agrees to dedicate its best efforts towards accomplishing its respective duties and responsibilities as provided for in this PSA so as to not affect the timely accomplishments of MILESTONES.
- c) SERVICE PROVIDER and CONTRACTING ENTITY are each solely and severally responsible for performing their several duties and obligations so that they are each able to satisfy their individual responsibilities contemplated by this PSA. SERVICE PROVIDER and CONTRACTING ENTITY are jointly responsible for satisfying joint responsibilities and each agrees to dedicate the necessary staff, staff time, and resources to promptly, timely, and efficiently accomplish such joint responsibilities, including but not limited to necessary training and instructions. SERVICE PROVIDER also has responsibilities to provide specific training and instructions to CONTRACTING

ENTITY assigned personnel and KEY USERS and agents as more fully described in the PSA.

- d) SERVICE PROVIDER shall comply with all applicable federal, state, and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the performance or SERVICES provided under this PSA. SERVICE PROVIDER shall obtain all patents, licenses (except for the Software previously purchased by CONTRACTING ENTITY) and any other permission required to provide the SOLUTION to CONTRACTING ENTITY.

## **5. Compensation**

- a) CONTRACTING ENTITY shall pay SERVICE PROVIDER the compensation, as specified in “Attachment B - Linear Responsibility and Schedule of Fees” subject to submission of appropriate documentation and completed and accepted SERVICES and DELIVERABLES in accordance with this PSA and “Attachment A - Scope of Services.” SERVICES and DELIVERABLES are to be completed and approved as specified in this PSA, “Attachment A - Scope of Services”. No payment will be due or owing for any incomplete, unaccepted, or undocumented SERVICES and DELIVERABLES.
- b) CONTRACTING ENTITY and SERVICE PROVIDER acknowledge that the compensation to be paid SERVICE PROVIDER pursuant to this PSA has been established at an amount believed to be reasonable for both the availability of SERVICE PROVIDER at the request of CONTRACTING ENTITY and the SERVICES and other work to be performed by SERVICE PROVIDER hereunder. Where agreed in advance or by the PSA and by the respective PARTIES’ Project Managers, in writing, or where permitted in the PSA, SERVICE PROVIDER’S offsite resources may perform some work onsite from time to time.

## **6. Dedication of Key Staff and Priority Customer Status**

For the complete period of the PSA, SERVICE PROVIDER agrees to dedicate the personnel listed in “Attachment C - SERVICE PROVIDER’S Key Team Members”, subject to CONTRACTING ENTITY’S approval, assigned to this PSA and SOLUTION as identified in the PSA. For the same period of time CONTRACTING ENTITY agrees to assign an Executive Sponsor, Project Manager, and Technical Lead to this PSA and SOLUTION. Each PARTY agrees to not remove any of these individuals except as a result of voluntary resignation, involuntary

termination for cause, illness, disability or death, or other such event that is beyond the reasonable control of the relevant PARTY or with prior written approval of the CONTRACTING ENTITY or as otherwise stated in this PSA. These personnel are considered essential personnel whose absence during the term of the PSA and implementation of SOLUTION could cause significant delays and/or added cost to complete this PSA. Each PARTY will use reasonable efforts to assign and sustain continuity of other personnel assigned to this PSA and SOLUTION, and SERVICE PROVIDER will use its best effort not to assign such personnel to any of its other contracts or projects.

## **7. Independent SERVICE PROVIDER Status**

- a) The PARTIES hereby acknowledge and covenant that:
  - i) SERVICE PROVIDER is an independent contractor and will act as an independent contractor and not as an employee of Oklahoma City and/or CONTRACTING ENTITY in performing the duties hereunder; and
  - ii) The PARTIES do not intend, and will not hold out that there exists, any corporation, joint venture, partnership, undertaking for a profit or other form of business venture or any employment relationship among the PARTIES other than that of an independent contractor relationship.
- b) All payments to SERVICE PROVIDER pursuant to this PSA shall be due and payable in the State of Oklahoma, even if SERVICES of SERVICE PROVIDER are performed outside the State of Oklahoma.
- c) As SERVICE PROVIDER is an independent contractor, CONTRACTING ENTITY will not withhold any Social Security tax, Medicare tax, Federal Unemployment tax, Federal Income tax, or State Income tax from any compensation paid to SERVICE PROVIDER. All such taxes, if due, are the responsibilities of SERVICE PROVIDER and will not be charged to Oklahoma City or CONTRACTING ENTITY.
- d) As an independent contractor, SERVICE PROVIDER agrees it is not entitled to and hereby waives any claims to any welfare or retirement benefits available to qualified employees of Oklahoma City or CONTRACTING ENTITY. SERVICE PROVIDER acknowledges that as an independent contractor it is not eligible to participate in any welfare or retirement benefit programs provided by Oklahoma City and CONTRACTING ENTITY for its employees.



- e) SERVICE PROVIDER will issue monthly invoices upon completion and acceptance of each SERVICES milestone pursuant to this PSA. Invoices are due and payable within thirty (30) days of receipt. In the event of a disputed billing, only the disputed portion will be withheld from payment, and CONTRACTING ENTITY shall pay the undisputed portion. CONTRACTING ENTITY will exercise reasonableness in disputing any bill or portion thereof and will provide written notice of any disputed bill or portion thereof to SERVICE PROVIDER within thirty (30) days of receipt of invoice. In response to a disputed billing, SERVICE PROVIDER must provide such reasonable supporting documents as may be requested by the CONTRACTING ENTITY, SERVICE PROVIDER must identify the provisions of the PSA which expressly authorize the billing and the express direction or authorization under which the SERVICE PROVIDER claims payment, after which SERVICE PROVIDER will set a meeting to discuss the billing dispute. If CONTRACTING ENTITY fails to make payment of any undisputed portion of an invoice within thirty (30) days of receipt of the invoice, SERVICE PROVIDER may, after giving twenty-one (21) days' prior written notice to CONTRACTING ENTITY, suspend SERVICES under this PSA until paid in full for such undisputed portion. In event of suspension of SERVICES, SERVICE PROVIDER will have no liability to CONTRACTING ENTITY for delay or damages caused by or related to such suspension

## **8. Termination and Stop Work**

- a) SERVICE PROVIDER agrees to commence work upon execution of this PSA, to perform in accordance with the agreed schedule and in accordance with the PSA and shall continue such work and SERVICES as stated herein, unless suspended or terminated by either PARTY as provided for herein, until the SOLUTION is completed, tested, and accepted by CONTRACTING ENTITY. This PSA may be terminated for convenience, for cause, or due to Force Majeure, upon written notice, as provided below:
- i) Termination for *Convenience*. This PSA may be terminated for *convenience* upon thirty (30) calendar days prior notification of such termination by CONTRACTING ENTITY to the SERVICE PROVIDER. Upon receipt of a notice of termination for convenience from the CONTRACTING ENTITY, SERVICE PROVIDER must (1) immediately discontinue all SERVICES and activities (unless the notice directs

otherwise), and (2) upon payment for SERVICES fully performed and accepted, SERVICE PROVIDER shall deliver to CONTRACTING ENTITY documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries, DELIVERABLE or other WORK PRODUCT, and other information and materials accumulated or created in performing this PSA, whether same are complete or incomplete, unless the notice directs otherwise. If CONTRACTING ENTITY issues a notice of termination for *convenience*, the PARTIES will review all actions of the SERVICE PROVIDER that could be due compensation for SERVICES and DELIVERABLES at the time of notice. It would be CONTRACTING ENTITY's intent to compensate the SERVICE PROVIDER for reasonable, completed, and accepted DELIVERABLES, and SERVICES rendered and reasonable expenses incurred, with sufficient supporting DOCUMENTATION, during and up to the expiration of the notice period, or as directed by the notice, in accordance with the terms, limits and conditions of this PSA and as further limited by the fixed price amounts set out in this PSA. Upon termination for *convenience* the PERFORMANCE BOND shall be released.

- ii) Termination for Cause. This PSA may be terminated for *cause* by the CONTRACTING ENTITY upon thirty (30) calendar days prior notice of such termination to the SERVICE PROVIDER, including, but not limited to, a breach of the terms and conditions of this PSA and/or the warranties contained herein, if the SERVICE PROVIDER has not remedied any breach or non-conformance within thirty (30) calendar days of notice to do so or other such longer period of time mutually agreed in writing by the PARTIES (with no obligation to either PARTY to agree to such longer period). If this PSA is terminated for *cause*, CONTRACTING ENTITY shall pay for all work and SERVICES performed by SERVICE PROVIDER in accordance with this PSA and approved by CONTRACTING ENTITY up to and including the date of expiration of the termination notice and SERVICE PROVIDER shall not be entitled to payment for any prior or future SERVICES and SERVICE PROVIDER shall release and waive any interest in any subsequent payments. CONTRACTING ENTITY shall notify SERVICE PROVIDER within ten (10) BUSINESS DAYS of its intention to withhold any payments due to SERVICE

PROVIDER for prior SERVICES, which had not been approved, and for costs, expenses, or damages incurred by CONTRACTING ENTITY by reason of SERVICE PROVIDER's breach for *cause*. Upon receipt of a notice of breach for *cause from* CONTRACTING ENTITY, SERVICE PROVIDER shall immediately discontinue all work and SERVICES affected, except those SERVICES and work to attempt to remedy the breach (unless the PARTIES agree in writing otherwise).

- iii) Force Majeure. Upon an event of *Force Majeure*, either PARTY may, upon immediate and timely written notice suspend their work and SERVICES to the other PARTY if (1) notice is given describing the *Force Majeure* event, (2) the notice describes the impact on the PARTY, (3) the notice identifies a proposal to workaround the event (assuming the same is available in the circumstances), (4) an estimate of the time until resumption of pre-event staffing, resources, process, methodology, and schedule, and (5) a proposal to allocate the cost to remedy the *Force Majeure*. Both SERVICE PROVIDER and CONTRACTING ENTITY agree to use all reasonable efforts to minimize the impact of a *Force Majeure* event on itself, the other PARTY, the delivery of the SOLUTION, and this PSA. In the event the *Force Majeure* makes it impossible or commercially impracticable for a PARTY to continue with its performance under this PSA, the PARTIES agree to negotiate in good faith to amend this PSA to address the impossibility or commercial impracticability.
- b) Regardless of the manner of termination for convenience or for cause, SERVICE PROVIDER shall timely deliver to CONTRACTING ENTITY all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials and any and all SERVICE PROVIDER DELIVERABLES accumulated in or during performance of this PSA or provision of the SOLUTION, whether complete or incomplete, unless CONTRACTING ENTITY directs otherwise.
- c) Should an event of Force Majeure occur, after notice to the other PARTY, neither PARTY shall be liable in damages or have the right to terminate this PSA for delay directly caused by or default directly caused by a *Force Majeure* event. The rights and remedies of the PARTIES provided in this paragraph are in addition to any other rights

and remedies provided by law or under this PSA. Termination herein shall not terminate or suspend any of the required provisions of Indemnity and Limitation of Liability paragraph or Insurance paragraph of this PSA.

- d) Rights and Remedies.** The rights and remedies of CONTRACTING ENTITY provided in this paragraph are in addition to any other rights and remedies provided by law or under the PSA. Further, any other rights and remedies set out in this PSA are in addition to the rights and remedies set out in this paragraph. Termination or Force Majeure herein shall not terminate or suspend any indemnification, insurance, or confidentiality required for to be provided by SERVICE PROVIDER under this PSA.

## **9. Warranties**

- a)** SERVICE PROVIDER warrants that all SERVICES performed, and SOLUTION provided under this PSA (as the same constitute SERVICE PROVIDER DELIVERABLES) shall be performed and completed consistent with generally prevailing and accepted industry and professional standards. SERVICE PROVIDER shall maintain during this PSA such generally prevailing and accepted industry and professional standards of care, skill, diligence and competency for delivery of the SOLUTION. SERVICE PROVIDER agrees to require all its employees, officers, agents, representatives, contractors, and subcontractors by the terms of this PSA, to provide the SOLUTION at the same generally prevailing and accepted professional and industry standards of care, skill, diligence and competence required of SERVICE PROVIDER (“Standard of Care”).
- b)** SERVICE PROVIDER affirms that the SERVICE PROVIDER SOLUTION will be completed within the time periods set forth in the PSA as may be extended from time to time in accordance with the PSA and SOLUTION shall be developed in accordance with the Standard of Care and shall conform to the DELIVERABLES defined in this PSA. CONTRACTING ENTITY recognizes that the completion of certain WORK PRODUCTS and DELIVERABLES require CONTRACTING ENTITY's assistance and direction and are conditioned on timely performance and completion of the certain activities required to be performed by CONTRACTING ENTITY.
- c)** SERVICE PROVIDER represents that it is aware of CONTRACTING ENTITY's approved business requirements for the SOLUTION as set forth in this PSA and agrees

that the SOLUTION shall satisfy and meet such requirements as the same are documented, validated, and clarified in the DELIVERABLES to be produced and signed off by the PARTIES in all material respects.

- d) At Final Acceptance, the WORK PRODUCTS, SERVICES, DELIVERABLES, and SOLUTION shall be formally accepted by OCWUT through a written letter or e-mail. Any SOLUTION shall:
  - i) Be fully functional under normal use and remain in good working order; and
  - ii) Function properly and in conformity with the warranties herein and in accordance with CONTRACTING ENTITY'S requirements as set forth in this PSA.
- e) SERVICE PROVIDER affirms that each of its employees, representatives, officers, agents, contractors, and subcontractors assigned to perform SERVICE PROVIDER obligations hereunder, shall have the proper skill, training and background so as to be able to perform in a competent and professional manner in accordance with the warranties, and requirements set forth herein and that SERVICE PROVIDER DELIVERABLES shall be performed and developed in accordance with generally prevailing and accepted industry and professional standards of care, skill, diligence and competency.
- f) Through the Final Acceptance period, SERVICE PROVIDER affirms that the SERVICE PROVIDER WORK PRODUCTS provided hereunder will accurately reflect the operation of the SOLUTION.
- g) Each and every SERVICES, WORK PRODUCT, DELIVERABLE, and DOCUMENTATION of the SERVICE hereunder shall be provided in a manner consistent with the Standard of Care, shall conform to the specifications and requirements for the same as set forth in this PSA or as otherwise agreed to in writing by CONTRACTING ENTITY and SERVICE PROVIDER, and shall comply with the standards established by CONTRACTING ENTITY.
- h) SERVICE PROVIDER affirms SOLUTION shall be fully functional and properly operational through Final Acceptance. In the event of any non-conformance by SERVICE PROVIDER of the above warranties, CONTRACTING ENTITY shall notify SERVICE PROVIDER immediately, whereupon the SERVICE PROVIDER will take

all commercially reasonable steps necessary to resolve any error, deficiency, or other concerns accordingly.

- i) CONTRACTING ENTITY'S sole and exclusive remedy and SERVICE PROVIDER'S sole and exclusive liability for any breach of this warranty provision shall be the re-performance of the service by SERVICE PROVIDER within a reasonable time and at no additional cost to CONTRACTING ENTITY, provided that CONTRACTING ENTITY gives written notice of such breach of warranty to SERVICE PROVIDER within one (1) year after completion of the SERVICES. Upon written notice of a warranty breach, SERVICE PROVIDER will commence re-performance and provide work arounds. In addition, within 72 hours of notice, if the re-performance has not been completed, SERVICE PROVIDER must provide a re-performance schedule, which minimizes the period of subsequent non-performance, and provide work arounds, which minimize non-performance issues and maximize functionality pending re-performance. SERVICE PROVIDER MAKES NO OTHER WARRANTY EXPRESS OR IMPLIED, EXCEPT AS SET FORTH IN THIS PSA; PROVIDED, FAILURE TO PROVIDE RE-PERFORMANCE WITHIN A REASONABLE TIME WILL BE DEEMED A BREACH OF THIS PSA.

#### **10. Indemnification and Limitation of Liability**

This section, Indemnification and Limitation of Liability, shall survive the expiration of this PSA. It is understood that these indemnities and hold harmless provisions are not limited or defined by the Insurance required under the insurance paragraph of this PSA.

- a) To the extent allowed by law, SERVICE PROVIDER agrees to release, defend and/or indemnify The City of Oklahoma City and CONTRACTING ENTITY and hold The City of Oklahoma City and CONTRACTING ENTITY harmless against any third party direct losses, claims, damages, liabilities, expenses (including all reasonable legal fees and expenses), judgments, fines or settlements sustained or incurred by The City of Oklahoma City or CONTRACTING ENTITY to the extent caused by the negligence of SERVICE PROVIDER in the performance of the SERVICES that results in bodily injury or death to any person or damage to any tangible property, subject to the provisions of subparagraph (c) below. Said reimbursement shall be made within thirty (30) calendar days (or such other time period as the parties may agree in the circumstances) of an

appropriate determination, whether by mutual agreement or by a court of law. SERVICE PROVIDER'S financial responsibilities may be satisfied by SERVICE PROVIDER'S insurers, as applicable.

- b) CONTRACTING ENTITY agrees that it is liable, to the extent provided in the Oklahoma Governmental Tort Claims Act, for any losses, claims, damages, liabilities, expenses (including all reasonable legal fees and expenses), judgments, fines or settlements by any third party in connection with any matter referred to in this PSA, if it shall be finally determined, judicially or otherwise, that such losses, claims, damages or liabilities resulted from the negligence of The City of Oklahoma City and CONTRACTING ENTITY. Said reimbursement shall be made within thirty (30) calendar days of an appropriate determination (or such other time period as the parties may agree), whether by mutual agreement or by a court of law.
- c) In respect of claims for direct damages to The City of Oklahoma City and/or the CONTRACTING ENTITY caused by the negligence of SERVICE PROVIDER or SERVICE PROVIDER'S employees, representatives, officers, agents, contractors or subcontractors in connection with the performance of their duties under this PSA, SERVICE PROVIDER'S total liability shall not exceed the greater of \$500,000 or 100% of the amount paid under this PSA in the 12 months immediately preceding the accrual of the claim, less and except SERVICE PROVIDER will be responsible for total liability, without limitation, for violation of third-party licenses or patents for software provided by SERVICE PROVIDER to CONTRACTING ENTITY.
- d) Neither PARTY shall be liable for any consequential, indirect, special, punitive, exemplary or incidental damages or lost profits, whether foreseeable or unforeseeable, arising out of the negligence of that PARTY.

## **11. Confidentiality**

The PARTIES acknowledge in the course of providing SERVICES to CONTRACTING ENTITY, each PARTY may provide the other with access to information of a confidential and proprietary nature including, but not limited to, information relating to customers, customer accounts and payment histories, customer social security numbers, customer identification, banking information, security systems, and other confidential data and technology, which are

considered confidential and shall belong to the disclosing PARTY. The recipient of such information agrees that during the time period this PSA is in effect, and for a period up to twelve (12) months following, neither PARTY may, without the written notice to the disclosing PARTY, disclose to any person, other than any of its employees or a person to whom disclosure is reasonably necessary or appropriate in connection with performance of this PSA, any of the aforementioned confidential or proprietary information obtained by the recipient.

However, SERVICE PROVIDER acknowledges that CONTRACTING ENTITY is a public agency subject to requests for information and posts its business documents on a public website for access and viewing by the citizens it serves and therefore this PSA and attachments produced during this PSA may be subject to posting and access to the public in the normal course of conducting CONTRACTING ENTITY'S business functions.

SERVICE PROVIDER agrees that as a condition of receipt of the final payment under this PSA, SERVICE PROVIDER and the SERVICE PROVIDER's Key Team Members will provide statements affirming that all copies of the confidential and proprietary information provided by the CONTRACTING ENTITY have been deleted or destroyed.

## **12. Miscellaneous**

- a) Validity.** The invalidity or unenforceability of any provision of this PSA shall not affect the validity or enforceability of any other provisions of this PSA, which shall remain in full force and effect.
- b) No Waiver.** The failure or neglect of any PARTY hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this PSA, or waiver by any PARTY of strict performance of any of the terms or conditions of this PSA, shall not be construed as a waiver or relinquishment in the future of such term or condition, but such term or condition shall continue in full force and effect.
- c) No Assignment without Consent.** The PARTIES hereby agree that as this is an agreement for the provision of specialized professional services, therefore SERVICE PROVIDER may not assign this PSA, in whole or in part, without the prior written consent of CONTRACTING ENTITY, which upon a clear showing that the proposed



assignee has the expertise, experience, and capability to timely perform this PSA and provide the SOLUTION, consent will not be unreasonably withheld.

- d) Venue and Applicable Law.** CONTRACTING ENTITY and SERVICE PROVIDER hereby agree that any dispute which may arise between or among them arising out of or in connection with this PSA shall be adjudicated before a court located in Oklahoma City, Oklahoma, and the PARTIES hereby submit to the exclusive personal jurisdiction of the courts of the State of Oklahoma located in Oklahoma City, Oklahoma and of the United States District Court for the Western District of Oklahoma, located in Oklahoma City, Oklahoma, with respect to any action or legal proceeding commenced by any PARTY, and they irrevocably waive any objection they now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum, relating to or arising out of this PSA, and consent to the service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the address set forth in the notice provision of this paragraph. This PSA shall be construed and enforced in accordance with the laws of the State of Oklahoma.
- e) Descriptive Headings.** The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this PSA.
- f) Counterparts.** This PSA may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.
- g) Amendments.** This PSA may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by all of the PARTIES hereto.
- h) Entire Contract.** This PSA constitutes the entire agreement between the PARTIES with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the PARTIES with respect to the subject matter hereof.
- i) Project Plan.** Both CONTRACTING ENTITY and SERVICE PROVIDER expressly agree that the schedule and time for performance of their respective obligations and tasks (as more particularly contained in this PSA) shall be made a part of this PSA and shall

be acted upon accordingly unless a mutually agreed written CHANGE REQUEST is executed or the Key Team Members completes work in a shorter time. Any failure on the part of either PARTY to timely object to the time of performance shall not waive their right to object at a later time. SERVICE PROVIDER agrees to complete each MILESTONE and the PSA according to the agreed schedule.

- j) **No Extra Work.** No claims for extra work of any kind or nature or character shall be recognized or paid by or be binding upon CONTRACTING ENTITY unless such SERVICES are first approved in writing by CONTRACTING ENTITY. Provided however, CONTRACTING ENTITY may contract separately in writing for such ADDITIONAL SERVICES at the agreed RATE CARD pricing in this PSA as it may in its discretion deem necessary by both PARTIES executing a CHANGE REQUEST.
- k) **Upgrades and Substitutions.** During the performance of the PSA, if any software named in this PSA is upgraded in the software provider's product line by software performing the same functions, but using improved technology, then the newer product must be substituted upon the direction and approval of CONTRACTING ENTITY's Executive Sponsor, or designee, and implemented by SERVICE PROVIDER for no increase in costs or fees.
- l) **Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if hand delivered or if sent by email transmission, upon confirmation of receipt, or if sent by registered or certified mail, or upon the sooner of the expiration of three (3) calendar days after deposit in United States Post Office facilities properly addressed with first class postage prepaid or acknowledgment of receipt. All notices and payments to a PARTY will be sent to the addresses set forth below or to such other address or person as such PARTY may designate by notice to each other PARTY hereunder:

To SERVICE PROVIDER:

Jacobs Engineering Group Inc.  
Attention: Luke Lenard  
Address 401 S Boston, Suite 330  
City, State Zip Code: Tulsa, OK 74103  
Telephone: (918) 583-3057  
E-mail: luke.lenard@jacobs.com

With a copy to:

Jacobs Engineering Group Inc.  
Attention: Legal Department  
Address: 1999 Bryan Street, Suite 1200  
City, State Zip Code: Dallas, TX 75201

AND

To Oklahoma City Water Utilities Trust  
Attention: Chris Browning, General Manager  
420 W. Main Street, Ste. 500  
Oklahoma City, Oklahoma 73102  
Telephone (405) 297-2422  
E-mail: [chris.browning@okc.gov](mailto:chris.browning@okc.gov)

AND

To City Hall  
Attention: City Clerk  
200 N. Walker Ave., Second Floor  
Oklahoma City, OK 73102  
Telephone (405) 297-2391  
Email: [cityclerk@okc.gov](mailto:cityclerk@okc.gov)

### **13. Nondiscrimination**

In connection with the performance of SERVICES under this PSA, SERVICE PROVIDER agrees as follows:

- a) SERVICE PROVIDER 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. SERVICE PROVIDER shall take 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. 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. SERVICE

PROVIDER shall agree to post, in conspicuous places, available to employees and applicants for employment, notices provided by the City Clerk of the City of Oklahoma City setting forth provisions of § 25-41 of the Oklahoma City Municipal Code, 2020.

- b) In the event of SERVICE PROVIDER's noncompliance with this nondiscrimination clause, this PSA may be suspended, or terminated by CONTRACTING ENTITY. CONTRACTING ENTITY may declare SERVICE PROVIDER ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by SERVICE PROVIDER.
- c) SERVICE PROVIDER agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this PSA.

#### **14. Anti-collusion**

SERVICE PROVIDER warrants that it has not employed or retained any company or person other than a bona fide employee working solely for SERVICE PROVIDER to solicit or secure this PSA. SERVICE PROVIDER 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 SERVICE PROVIDER, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this PSA.

#### **15. CONTRACTING ENTITY Responsibilities**

- a) CONTRACTING ENTITY shall only provide such space, information, equipment and personnel to assist SERVICE PROVIDER as expressly set forth in the PSA (or as may be agreed otherwise by the PARTIES from time to time by CHANGE REQUEST for the purposes of this PSA).
- b) All financial obligations under this PSA shall be solely the obligations of CONTRACTING ENTITY and not the obligation of Oklahoma City regardless of how stated herein.
- c) CONTRACTING ENTITY shall only provide such support and SERVICES as specifically and expressly set forth in this PSA, or as may be agreed to be supplied by CONTRACTING ENTITY pursuant to any CHANGE REQUEST.

#### **16. Insurance**

- a) SERVICE PROVIDER shall provide CONTRACTING ENTITY with written evidence from its brokers of insurance (whether by way of an ACORD certificate or other means

as the PARTIES shall agree reasonably) and shall maintain such insurance throughout the term of this PSA as required herein:

i) **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY**

**INSURANCE:** in amounts as prescribed by the laws of the State of Oklahoma.

ii) **GENERAL LIABILITY INSURANCE:** to protect PARTIES and the City of Oklahoma City from claims for property damage and bodily injury including death, or other loss which may arise directly from the activities, omissions, and operations of the SERVICE PROVIDER under the PSA, whether such activities, omissions, and operations be by the SERVICE PROVIDER, its subcontractor, or by anyone employed by or acting for the benefit of the SERVICE PROVIDER in conjunction with this PSA. The general liability policy, must have the following coverage amounts for each insured:

- (a) **Property Damage Liability** - Limits shall be carried in the amount of twenty-five thousand dollars (\$25,000) to any one person for any single claim for damage to or destruction of property arising out of a single act, accident, or occurrence.
- (b) **All Other Liability** - In the amount of one hundred seventy-five thousand dollars (\$175,000) for claims including accidental death, personal injury, and all other claims to any one person out of a single act, accident, or occurrence.
- (c) **General Aggregate Limit**- In the amount of one million dollars (\$1,000,000) for any number of claims arising out of a single act, occurrence or accident.

iii) **AUTOMOBILE LIABILITY INSURANCE** – The SERVICE PROVIDER shall maintain automobile insurance coverage in the amounts required by Oklahoma law as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles and equipment when said vehicles or equipment is utilized to meet the requirements of this PSA.

The insurance policies required herein shall be issued by a company authorized to do business in the State of Oklahoma. Upon request, the CONTRACTING ENTITY shall be furnished with a Certificate of Insurance evidencing all of the above-referenced requirements. All policies must be in the form of an “occurrence” insurance coverage or policy. Unless stated otherwise above, all policies must be fully insured with any single deductible not exceeding \$25,000. SERVICE

PROVIDER's insurance company must provide CONTRACTING ENTITY at least thirty (30) calendar days' prior written notice of any cancellation or material coverage change in their policies.

**The CONTRACTING ENTITY must be listed as a Certificate Holder. This PSA requires that CONTRACTING ENTITY, including CONTRACTING ENTITY and The City of Oklahoma City, be included as additional insured on the SERVICE PROVIDER's insurance policies, except Worker's Compensation and Employer's Liability Insurance. Any blanket additional insured endorsement which limits coverages to any CONTRACTING ENTITY or The City of Oklahoma City is not compliant with this PSA and shall be considered a breach. CONTRACTING ENTITY must be provided with a Certificate of Insurance or Endorsement evidencing CONTRACTING ENTITY and The City of Oklahoma City's additional insured status. The policy description shall state the following: "Additional insured(s) on the listed policies are those required in the contract" or "Identify by Name Entity(ies) to be included as Additional Insured from contract."**

#### **17. Dispute Resolution Process**

Should the PARTIES not timely resolve any dispute through the Project Management Escalation Processes identified in the PSA, either PARTY may request that each PARTY appoint an official representative to meet and attempt resolution of any dispute presented in writing to the other PARTY within five (5) Business Days of notice. Resolved disputes will be documented in writing and signed by the appointed official representatives of the PARTIES within two (2) Business Days of resolution. Either PARTY may pursue any other remedy available as provided for in this PSA or by law if the PARTIES fail to satisfactorily resolve the dispute.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.**

IN WITNESS WHEREOF, the PARTIES hereto have executed this PROFESSIONAL SERVICES AGREEMENT as of the day and year first written above.

SERVICE PROVIDER: Jacobs Engineering Group Inc.

By: Lars B. Ostervold Jr.

Print Name: Lars B. Ostervold Jr.

As: Business Vice President and Designated Manager

STATE OF Oklahoma )

COUNTY OF Tulsa )

The foregoing instrument was acknowledged before me this 19th day of August, 2022 by Lars B. Ostervold Jr., as Business VP and Designated Manager of Jacobs Engineering Group Inc.

(Seal)



Notary: Amanda M. George

My Commission Expires: 12-02-2023

Commission Number: 15011025

**APPROVED** by the Oklahoma City Water Utilities Trust and **SIGNED** by the Chairman this  
27th day of September, 2021-2022

ATTEST:

Amy K Simpson  
Secretary



Joe Cook  
Chairman

**CONCURRED** by The City of Oklahoma City and **SIGNED** by the Mayor this 27th day  
of September, 2021-2022

ATTEST:

Amy K Simpson  
City Clerk



David Holt  
Mayor

**REVIEWED** for form and legality.

Craig Keith  
Assistant Municipal Counselor

C  
2  
3  
9  
0  
0  
4