

**AGREEMENT  
FOR  
ENGINEERING SERVICES  
FOR  
SYSTEM WIDE DISTRIBUTION IMPROVEMENTS  
OKMULGEE CO. RWD NO. 2**

THIS AGREEMENT, including Attachments, between the Okmulgee Co. RWD No. 2 (Owner), and Holloway, Updike and Bellen, Inc. (Engineer);

**WITNESSETH:**

WHEREAS, Owner intends to construct the following improvements:

**PROJECT :**

- Professional engineering services for the planning and design of the replacement or rehabilitation of PS#1 to increase capacity, including pumps, variable frequency drives, standby power, etc. to serve the entire District, replacement or rehabilitation of PS#3 to increase capacity, including pumps, variable frequency drives, standby power, etc., three (3) pressure reducing stations, new 150,000 gallon standpipe, replacement of 3200 LF of 4" Line from PS#3, and along Will Sampson Road to S. 218 Rd. with 8" Line, replacement 18,000 LF of 6" Line from Intersection of Herrick Rd. and N 245 Rd to N. 270 Rd, automatic flush hydrants should be installed to reduce water age on selected dead end lines, abandon approximately 88,000 LF the existing smaller parallel lines and reconnect existing meters to larger line, multiple water line connections and/or tie-overs, new Supervisory Control and Data Acquisition (SCADA) system for controlling, monitoring, and analyzing data to monitor and control equipment needed to operate the distribution system and any other appurtenances, as desired and/or required by the Owner, within an approximate \$1.2 million budget.

WHEREAS, Owner requires certain engineering services (the Services) in connection with the Project; and,

WHEREAS, Engineer is prepared to provide the Services;

NOW THEREFORE, in consideration of the promises contained in this Agreement, Owner and Engineer agree as follows:

**ARTICLE 1 - EFFECTIVE DATE**

The effective date of this Agreement shall be the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**ARTICLE 2 - GOVERNING LAW**

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

### **ARTICLE 3 - SERVICES TO BE PERFORMED BY ENGINEER**

Engineer shall perform the Services described in Attachment A, Scope of Services. During the construction phase, the Engineer shall be the Owner's agent and representative with respect to all services of the Engineer that are required or authorized by the construction documents.

### **ARTICLE 4 - COMPENSATION**

Owner shall pay Engineer in accordance with Attachment B, Compensation.

### **ARTICLE 5 - OWNER'S RESPONSIBILITIES**

Owner shall be responsible for all matters described in Attachment C, Owner's Responsibilities and Special Conditions.

### **ARTICLE 6 - STANDARD OF CARE**

Engineer shall perform the Services undertaken in a manner consistent with the prevailing accepted standard for similar services with respect to projects of comparable function and complexity, and with the applicable laws and regulations published and in effect at the time of performance of the Services. Other than the obligation of the Engineer to perform in accordance with the foregoing standard, no warranty, either express or implied, shall apply to the Services to be performed by the Engineer pursuant to this Agreement or the suitability of Engineer's work product.

### **ARTICLE 7 - LIABILITY AND INDEMNIFICATION**

7.1 General. Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the Project, and the Engineer's fee for the Services; and in consideration of the promises contained in this Agreement, Owner and Engineer agree to allocate and limit such liabilities in accordance with this Article.

7.2 Indemnification. Engineer agrees to defend, indemnify, and hold harmless the Owner, its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by its failure to perform its obligations under this agreement or by its negligent acts, errors, or omissions.

7.3 Survival. Upon completion of all Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article shall survive.

### **ARTICLE 8 - INSURANCE**

During the performance of the Services under this Agreement, Engineer shall maintain the following insurance:

- (1) General Liability Insurance, with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.
- (2) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each accident.

- (3) Workers' Compensation Insurance and Employer's liability Insurance in accordance with statutory requirements.
- (4) Professional Liability Insurance, with a limit of \$2,000,000 annual aggregate.

Engineer shall, upon written request, furnish Owner certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to Owner. All Project contractors shall be required to include Owner and Engineer as additional insureds on their General Liability insurance policies, and shall be required to indemnify Owner and Engineer to the same extent.

#### **ARTICLE 9 - LIMITATIONS OF RESPONSIBILITY**

Engineer shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; or (2) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Engineer in Attachment A, Scope of Services.

#### **ARTICLE 10 - LIMITATIONS OF RESPONSIBILITIES FOR ACTS OF OTHERS**

Provided that the Engineer has acted in good faith, Engineer shall not be liable to Owner for breach of contract or for negligent error or omission in failing to detect, prevent, or report the failure of any contractor, subcontractor, vendor, or other project participant to fulfill contractual or other responsibilities to the Owner, failure to finish or construct the Project in accordance with the plans and specifications, or failure to comply with federal, state, or local laws, ordinances, regulations, rules, codes, orders, criteria, or standards.

#### **ARTICLE 11 - OPINIONS OF COST AND SCHEDULE**

Since Engineer has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project schedules, Engineer's opinion of probable costs and of Project schedules shall be made on the basis of experience and qualifications as a professional engineer. Engineer does not guarantee that proposals, bids, or actual Project costs will conform to Engineer's cost estimates or that actual schedules will conform to Engineer's projected schedules. Engineer shall complete the services within the time frame outlined on Attachment D, Schedule, subject to conditions which are beyond the control of the Engineer.

#### **ARTICLE 12 - REUSE OF DOCUMENTS**

All documents, including, but not limited to, drawings, specifications, and computer software prepared by Engineer pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer and Owner shall be deemed to have assumed the risk of such unauthorized reuse. Any verification or adaptation of documents will entitle Engineer to additional compensation at rates to be agreed upon by Owner and Engineer.

### **ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by Engineer as part of the Services shall become the property of Owner provided, however, that Engineer shall have the unrestricted right to their use. Engineer shall retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Engineer. The Owner may use said documents for their own use at no cost to the Owner.

### **ARTICLE 14 - TERMINATION**

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to Owner. If termination or suspension is for Owner's convenience, Owner shall pay Engineer for all the Services performed and termination or suspension expenses in such amount as agreed upon by the Owner and Engineer.

### **ARTICLE 15 - DELAY IN PERFORMANCE**

Neither Owner nor Engineer shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods, earthquakes, fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Owner or Engineer under this Agreement.

Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

**ARTICLE 16 - COMMUNICATIONS**

Any communication required by this Agreement shall be made in writing to the addresses specified below with a copy to the Owner’s attorney:

Engineer:                   Holloway, Updike and Bellen, Inc.  
                                  818 Eastside Boulevard  
                                  P.O. Box 1543  
                                  Muskogee, OK 74402  
                                  Attention: Greg Armstrong, Vice President

Owner:                      Okmulgee Co. RWD No. 2  
                                  P.O. Box 39  
                                  Preston , OK 74456  
                                  Attention: Chairman

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

**ARTICLE 17 - WAIVER**

A waiver by either Owner or Engineer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

**ARTICLE 18 - SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**ARTICLE 19 - INTEGRATION**

This Agreement represents the entire and integrated Agreement between Owner and Engineer. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

**ARTICLE 20 - SUCCESSORS AND ASSIGNS**

To the extent permitted by Article 21, Owner and Engineer each binds itself and its successors and assigns to the other party to this Agreement.

**ARTICLE 21 - ASSIGNMENT**

Neither Owner nor Engineer shall assign its duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Engineer from employing independent consultants, associates, and subcontractors to assist in the performance of the Services.

**ARTICLE 22 - THIRD PARTY RIGHTS**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and Engineer.

**ARTICLE 23 – AUTHORIZATION TO PROCEED**


The Engineer is authorized to proceed upon execution of this agreement.

IN WITNESS WHEREOF, Owner and Engineer have executed this Agreement.

**OWNER:**  
OKMULGEE CO. RWD NO. 2

**ENGINEER:**  
HOLLOWAY, UPDIKE AND BELLEN  
INC.

\_\_\_\_\_  
Chairman

 07-16-24  
\_\_\_\_\_  
Vice President

(SEAL)

ATTEST: \_\_\_\_\_  
Secretary

**ATTACHMENT A  
TO  
AGREEMENT FOR ENGINEERING SERVICES  
BETWEEN  
OKMULGEE CO. RWD NO. 2, OWNER  
AND  
HOLLOWAY, UPDIKE AND BELLEN, INC., ENGINEER  
FOR  
SYSTEM WIDE DISTRIBUTION IMPROVEMENTS**

**SCOPE OF SERVICES**

**I. SCOPE OF THE PROJECT**

The projects consist of the design and construction of the following improvements:

**WATER SYSTEM IMPROVEMENTS:**

- Professional engineering services for the planning and design of the replacement or rehabilitation of PS#1 to increase capacity, including pumps, variable frequency drives, standby power, etc. to serve the entire District, replacement or rehabilitation of PS#3 to increase capacity, including pumps, variable frequency drives, standby power, etc., three (3) pressure reducing stations, new 150,000 gallon standpipe, replacement of 3200 LF of 4" Line from PS#3, and along Will Sampson Road to S. 218 Rd. with 8" Line, replacement 18,000 LF of 6" Line from Intersection of Herrick Rd. and N 245 Rd to N. 270 Rd, automatic flush hydrants should be installed to reduce water age on selected dead end lines, abandon approximately 88,000 LF the existing smaller parallel lines and reconnect existing meters to larger line, multiple water line connections and/or tie-overs, new Supervisory Control and Data Acquisition (SCADA) system for controlling, monitoring, and analyzing data to monitor and control equipment needed to operate the distribution system and any other appurtenances, as desired and/or required by the Owner, within an approximate \$1.2 million budget.

**II. SCOPE OF SERVICES**

**A. System Hydraulic Model**

**1. Field Work**

- a. Coordinate with District crew to obtain critical field information, including pressure readings, pressure recorders, tank information, etc.

2. Mapping
  - a. Not required - District to provide digital files of existing water system and location coordinates of all existing meters via Diamond Maps.
3. System Wide Water Distribution Model
  - a. Enter all pipes, junctions, water tanks, pump stations and water supply facilities in "Info Water" modeling software.
  - b. Add water customer demands to the water model.
  - c. Run the model under a "Steady State" condition to check for connectivity.
  - d. Develop a diurnal demand curve based on water used.
  - e. Run the model of the existing system in an extended time mode under both average day and peak day demands.
  - f. Develop pressure contour maps, tank level graphs, demand graphs, etc. and review to determine "weak areas" of the system. Provide these documents to the District and review.

B. Environmental:

1. Environmental/NEPA work is not included in this scope.

C. Sub-Agreement Engineering Investigations and Technical Memorandum

1. Geotechnical Investigation - Subcontract with a qualified geotechnical firm for drilling 2 holes 30 feet deep and a soils report. The cost of the geotechnical report will be paid by the Owner.
2. Prepare a Technical Memorandum for the project for submission to the Oklahoma Department of Environmental Quality for review and comment. Revise the TM as required.
3. Prepare Categorical Exclusion Request for environmental clearance to the Oklahoma Department of Environmental Quality.
4. The Engineer shall prepare the standard DEQ Form No. 656-SER Engineering Report Form for BPS Stations, Tanks, and/or water lines and submit to Oklahoma Department of Environmental Quality (ODEQ) for construction permitting.

D. Field Survey and Preliminary Design:

1. The Engineer will conduct a field survey of the proposed project as necessary to complete the work described.



2. The Engineer shall prepare preliminary plans and specifications for the proposed work. The preliminary plans and specifications shall be an abbreviated form of the final plans and specifications, completed to the extent that the design concept is demonstrated and the major features, materials and equipment can be reviewed by the Owner.
  3. The Engineer shall update the Opinion of Probable Cost based on the preliminary plans and specifications.
  4. The Engineer shall provide the Owner with four copies of the preliminary plans and specifications and Opinion of Probable Cost Estimate. Plans shall be on 11" X 17" format acceptable to the ODEQ. A meeting shall be held to review the Owner's comments. Comments agreed upon by all parties shall be incorporated into the final design.
- E. Final Design: The Final Design shall proceed on the basis of the approved Preliminary Design as described above. The following services shall be provided in the preparation of the Final Design.
1. The Engineer shall finalize the plans and specifications as is necessary for bidding and construction of the proposed project including bid forms, general conditions, bonds, special conditions, advertisement for bids and information for bidders.
  2. The Engineer shall prepare an updated Opinion of Probable Cost based on the final design.
  3. The Engineer shall provide the Owner with four copies of the final plans and specifications for review by the Owner. A meeting shall be held to review the Owner's comments. Comments agreed upon by all parties shall be incorporated into the final design.
- F. Bidding Services: The Engineer will furnish bidding phase services as described below:
1. Advertising for Bids. Assist Owner in advertising for and obtaining bids for construction of the Project to include issuing bidding documents to interested parties, and maintaining a record of those to whom bidding documents have been issued.
  2. Bidders Questions. Engineer shall receive and respond to, in an appropriate manner, all questions of bidders and other interested parties during the course of the bid period.

3. Addenda. Issue addenda as appropriate or as directed by Owner to interpret, clarify or expand the bidding documents.
  4. Equivalency Determinations. Consult with Owner and make recommendations concerning the acceptability of substitute materials and equipment proposed by bidder(s) when substitution prior to the award of contracts is allowed by the bidding documents.
  5. Prebid Conference. The Engineer shall conduct a prebid conference on the Owner's behalf. The Engineer shall plan and conduct the meeting and answer questions posed by the contractors.
  6. Bid Opening and Contract Preparation. Attend the bid opening, prepare bid tabulation sheets and assist Owner in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment, and services.
  7. The Engineer shall prepare an Engineer's Cost Estimate and submit it to the Owner prior to the opening of bids.
- G. Engineering Services During Construction: Engineer shall provide the construction administration services as summarized below:
1. Pre-Construction Conference. Engineer shall conduct the pre-construction conference and issue the necessary memorandum. The conference shall initialize the construction administration services on each individual Project.
  2. Construction Progress Meetings. All progress and coordination meetings necessary during the Project shall be coordinated by the Engineer. Chairing of said meetings shall be as appropriate to the meeting being held. In general, progress meetings shall be conducted a minimum of monthly during the construction period and as often as weekly during critical phases of any work. These meetings shall be in addition to monthly site scheduling and coordination meetings between the Contractor's superintendent, the Resident Project Representative, and the Owner's representative.
  3. Submittal Review. Engineer shall review Contractor's material submittals, equipment shop drawings, and material test certifications for compliance with the approved plans and specifications.
  4. Pay Estimates. Engineer shall review construction pay estimates and make recommendations for payment or non-payment to the Owner.

5. Contractor's Schedule. Engineer shall review and make comments on the Contractor's proposed construction schedules and monitor the progress of each Contractor relative to the approved schedule throughout the construction Project. Engineer shall report problems, concerns, and proposed remedies to Owner.
6. Contractor's Claims. Engineer shall evaluate to present options and opinions for consideration by the Owner on claims submitted by the contractors.
7. Change Orders. Evaluate and prepare change orders necessary for the Project and make recommendations to Owner.
8. Final Inspections. After completion of the punch lists generated by a pre-final inspection, Engineer shall coordinate and conduct the final inspection with all interested parties to the Project.
9. Acceptance. Prior to final acceptance of the Project, Engineer shall review all contractual requirements of the Contractor and, only upon full receipt and satisfaction of those requirements, recommend acceptance of the Project by the Owner. Review shall include acceptable performance tests of equipment and sequencing required by the construction contract.
10. Clarifications. Engineer shall provide decisions and clarifications in accordance with the construction contract documents on questions regarding the work or intent of the Project requirements.
11. Field Changes. Engineer shall review proposed field changes covering modifications or revisions necessitated by field conditions or the requests of the Owner. Engineer shall make appropriate recommendations and coordinate the final changes.
12. Record Drawings. From information provided by the Contractor the, Engineer shall update electronic files (ACAD) of construction drawings to reflect the "as-constructed" configuration of the Project. Engineer shall submit to Owner three sets of reproducible record drawings at completion of the Project.
13. Warranty Coordination. Engineer shall track the dates of beneficial occupancy of all portions of the Project and coordinate any warranty work with Contractor which is necessary during the one-year warranty period.

- H. Construction Services Contingency: Should the Contractor fail to complete the Project in the contracted construction period (as identified in the bid documents of the Project and as formally adjusted for weather considerations and additional work not associated with Owner-requested scope changes), the Engineer shall provide continuing construction services. The services to be provided shall be identical in nature to the services identified in previous sections of this detailed scope of services and shall be considered as additional services or as justification for budgetary extension, if so required, to compensate Engineer for all additional duties performed.

**ATTACHMENT B  
TO  
AGREEMENT FOR ENGINEERING SERVICES  
BETWEEN  
OKMULGEE CO. RWD NO. 2, OWNER  
AND  
HOLLOWAY, UPDIKE AND BELLEN, INC., ENGINEER  
FOR  
SYSTEM WIDE DISTRIBUTION IMPROVEMENTS**

**COMPENSATION**

**I. PAYMENTS FOR SERVICES OF THE ENGINEER:**

- A. Basic Engineering Services. For basic engineering services performed under the Scope of Services in Attachment A, the Owner shall pay the Engineer the following lump sum amounts:

TASK	FEE
Hydraulic Analysis of Distribution System	\$25,000.00
Survey and Preliminary Design	7.7% of Construction Cost
Final Design	
Bidding Services	
Services During Construction	
Resident Project Representative (Hourly)	(1)

(1) The Engineer will provide a Resident Project Representative at a rate of \$110.00/hr. upon request. This rate shall include all travel and per diem.

- B. For authorized services performed by the Engineer which are outside the Scope of Services outlined in Attachment A of this Agreement, the Owner will pay the Engineer in accordance with the attached Hourly Rates, plus subcontract work, if any, and direct expenses at cost.

**II. TIMES OF PAYMENT:** Invoices are due and payable within 30 days of date of invoice.

- A. Basic Engineering Services. For the basic engineering services performed under Section II of the Scope of Services in Attachment A, monthly payments shall be made in proportion to services performed.
- B. Additional Engineering Services. For other additional engineering services, authorized by Owner in advance of the services being performed, monthly payments by the Owner shall be based on detailed invoices from Engineer for work completed.

**ATTACHMENT C  
TO  
AGREEMENT FOR ENGINEERING SERVICES  
BETWEEN  
OKMULGEE CO. RWD NO. 2, OWNER  
AND  
HOLLOWAY, UPDIKE AND BELLEN, INC., ENGINEER  
FOR  
SYSTEM WIDE DISTRIBUTION IMPROVEMENTS**

**OWNER'S RESPONSIBILITIES AND SPECIAL CONDITIONS**

**I. OWNER RESPONSIBILITIES**

1. Owner shall furnish to Engineer all available information pertinent to the Project including previous reports and any other data relative to design and construction of the Project. However, by providing this information the Owner does not in any way guarantee the accuracy of the information.
2. Owner shall furnish and make all provisions for the Engineer to enter upon public or private property as required for the Engineer to perform his Services under this Agreement.
3. Owner shall be responsible for all permit fees.
4. Owner shall be responsible for all land/easement acquisition and filing of the required legal documents.
5. Owner shall examine all studies, reports, sketches, estimates, specifications, plan drawings, proposals, and other documents presented by the Engineer and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Services of the Engineer.
6. Owner shall designate in writing a person to act as its representative in respect to the work to be performed under this Agreement, and such person shall have complete authority to transmit instructions, receive information, interpret, and define Owner's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the services covered by this Agreement.
7. Owner shall furnish legal assistance as required in the preparation, review, and approval of construction documents.

8. Owner shall furnish assistance in locating existing underground utilities and in expediting their relocation in preparation for construction.
9. Owner shall furnish such physical testing for quality control and quality assurance during construction as may be required by the construction contract documents, or as required for design changes merited during construction due to unforeseen circumstances, including geotechnical services.
10. The Owner shall pay for costs of any special environmental studies if required for the project.

**II. SPECIAL CONDITIONS**

None.