

**SALLISAW MUNICIPAL AUTHORITY
REGULAR MEETING**

November 9, 2020

**Time: Immediately Following the
Meeting of the Board of City Commissioners**

**Wheeler Event Center
103 North Wheeler
Sallisaw, OK**

A G E N D A

- 1. Meeting called to order**
- 2. Declaration of a quorum**
- 3. Consider Approval of Minutes of Regular Meeting of October 12, 2020**
- 4. Consider Approval of Regular Meeting Dates for Calendar Year 2021**
- 5. Discuss and Consider Approval of Change Order No. 1, Zero Cost, for the Wastewater Treatment Plant - Flow Equalization Basin - Phase II**
- 6. Discuss and Consider Approval of Contract for Professional Services with Olsson, Inc. of Fayetteville, Arkansas, for Engineering and Support Services Related to a new 12.47 kV Electric Distribution Line, in an *Amount Not to Exceed* \$224,930.00; and, Authorization for the General Manager to Sign the Agreement and any Other Necessary Documents Related to this Contract**
- 7. Discussion and Possible Guidance to Staff Concerning Current and Upcoming Retransmission Contract Negotiations with Programmers**
- 8. Presentation of the FY 2020 Utility Report for the Period of July 1, 2019 through June 30, 2020**
- 9. Administrative Reports**

10. Adjourn

Posted: NOVEMBER 5, 2020

Time: 4:20 p.m.

Dianna Davis

MINUTES
SALLISAW MUNICIPAL AUTHORITY
REGULAR MEETING
OCTOBER 12, 2020

The Sallisaw Municipal Authority met in a regular meeting on October 12, 2020, in the Wheeler Event Center, located at 103 North Wheeler. Notice of the meeting was given by e-mailing the agenda to Sequoyah County Times; by posting at city hall; by posting on the city website and, by giving notice to the City Clerk.

Members Present:	Ernie Martens,	Chairman
	Ronnie Lowe,	Trustee, Ward 1
	Philip Gay	Trustee, Ward 2
	Shannon Vann,	Trustee, Ward 4

Members Absent:	Julian Mendiola	Trustee, Ward 3
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Staff present:	Keith Skelton,	General Manager
	John R. Montgomery,	City Attorney
	Dianna Davis,	Secretary to the Authority
	Keith Miller,	Building Development Director
	Amy Edwards,	Sallisaw NOW
	George Bormann,	Grants Admin. / Eco. Dev. Dir.
	Gene Martin,	Equipment Services Superintendent
	Anthony Armstrong,	Fire Chief

Others present: Roy Faulkenberry; Robert Morris

Chairman Martens called the meeting to order at 7:20 p.m. and declared a quorum was present.

CONSIDER APPROVAL OF MINUTES OF REGULAR MEETING OF SEPTEMBER 14, 2020

Motion was made by Lowe, seconded by Gay, for approval. Vote: Lowe aye; Gay aye; Mendiola aye; Vann aye; Martens aye. Motion carried 5-0.

DISCUSS AND CONSIDER APPROVAL OF RESOLUTION 2020-06; A RESOLUTION AMENDING THE MASTER FEE SCHEDULE, ESTABLISHING CERTAIN RATES AND FEES FOR THE SALLISAW MUNICIPAL AUTHORITY, AND SUPERSEDING PREVIOUS RESOLUTIONS

Motion was made by Vann, seconded by Lowe, for approval of Resolution 2020-06. Vote: Vann aye; Lowe aye; Gay aye; Martens aye. Motion carried 4-0.

**DISCUSS AND CONSIDER APPROVAL OF TOWER LEASE AGREEMENT
BETWEEN THE SALLISAW MUNICIPAL AUTHORITY AND THE BOARD
OF COUNTY COMMISSIONERS, SEQUOYAH COUNTY, OKLAHOMA**

Following discussion, motion was made by Vann, seconded by Gay, for approval. Vote: Vann aye; Gay aye; Lowe aye; Martens aye. Motion carried 4-0.

**DISCUSS AND CONSIDER APPROVAL OF STAFF'S REQUEST TO
REINVEST A SALLISAW MUNICIPAL AUTHORITY CERTIFICATE OF
DEPOSIT**

Motion was made by Lowe, seconded by Gay, for approval of staff's request to reinvest a Sallisaw Municipal Authority certificate of deposit with Firststar Bank, the high bidder, for 273 days at .76% interest. Vote: Lowe aye; Gay aye; Vann abstain; Martens aye. Motion carried 3-1.

ADMINISTRATIVE REPORTS

None.

Motion was made by Lowe, seconded by Gay, to adjourn the meeting there being no further business. Vote: Lowe aye; Gay aye; Vann aye; Martens aye. Motion carried 4-0. The meeting adjourned at 7:24 p.m.

APPROVED the 9th day of NOVEMBER 2020.

SECRETARY TO THE AUTHORITY

(SEAL)

AGENDA ITEM COMMENTARY

Meeting Date: November 9, 2020
Board: Sallisaw Municipal Authority
Subject: 2021 Regular Meeting Dates

ITEM TITLE: Consider Approval of Regular Meeting Dates for Calendar Year 2021

INITIATOR: City Clerk

STAFF INFORMATION SOURCE: City Clerk

BACKGROUND: Staff recommends the Regular Meetings for the Sallisaw Municipal Authority be scheduled for the 2nd Monday of each month, immediately following the meeting of the Board of City Commissioners.

EXHIBITS:

KEY ISSUES: N/A

FUNDING SOURCE: N/A

RECOMMENDATION: Approval of 2021 Regular Meeting schedule.

AGENDA ITEM COMMENTARY

Meeting Date: November 9, 2020
Board: Sallisaw Municipal Authority
Subject: Wastewater Treatment Plant FEB Phase II

ITEM TITLE: Discuss and Consider Approval of Change Order No. 1, Zero Cost, for the Wastewater Treatment Plant - Flow Equalization Basin - Phase II

INITIATOR: Project Engineer

STAFF INFORMATION SOURCE: Building Development Director

BACKGROUND: Change Order #1 is a zero cost change order.

This portion of the flow basin contains a concrete floor that can be easily cleaned as sludge accumulates. Change order removes 4" of gravel below the concrete floor and adds 1" of additional concrete to floor of the basin. This will allow a total concrete thickness of 5", allowing the floor to hold up better to heavier equipment in the future.

Contractor has also agreed to pour a 15 ft wide section of concrete on the east slope of the basin. This slope will have grooves in the concrete and will allow better access to equipment when removing sludge.

EXHIBITS: 1. WWTP FEB Phase II - CO#1

KEY ISSUES: None

FUNDING SOURCE: N/A

RECOMMENDATION: Staff recommends approval of Change Order #1.

CONTRACT CHANGE ORDER

ORDER NO. 1

DATE October 15, 2020

CONTRACT FOR: Wastewater Treatment Plant - Flow Equalization Basin - Phase II

STATE Oklahoma

OWNER: City of Sallisaw

COUNTY Sequoyah

Job No: 16-6704

TO: HCCC Co, LLC You are hereby requested to comply with the following changes from the contract plans and specifications:

Description of Changes (Supplemental Plans and Specifications Attached)			DECREASE in Contract Price	INCREASE in Contract Price
Items	Description	Cost		
10.	Reinforced Concrete Liner (floor of FEB) thickness original thickness 4" new floor thickness 5" 214.73 CY @ \$ 285.00/CY			\$ + 61,200.00
12.	4" Gravel # 57 - Concrete Liner 1,020 CY @ \$ 60.00/CY		\$ - 61,200.00	
* The contractor has also agreed to pour a 15' wide section on the basin slope w/ 5" of concrete & place grooves in concrete. This would provide additional traction for equipment moving up & down the slope during the cleaning process of the basin.				
NET CHANGE IN CONTRACT			\$ -0-	\$ + -0-

JUSTIFICATION:

ORIGINAL CONTRACT PRICE \$ 875,490.00

CHANGE ORDER #1 \$ -0-

NEW CONTRACT PRICE \$ 875,490.00

The amount of the Contract will be (Decreased) (Increased) By The Sum Of

Zero (\$ -0-)

The Contract Total including this and previous Change Orders Will Be:

Eight Hundred Seventy Five Thousand Four Hundred Ninety Dollars 00/100 (\$ 875,490.00)

The Contract Period Provided for Completion Will Be (Increased) (Decreased) (Unchanged):

This document will become a supplement to the contract and all provisions will apply hereto.

Requested _____
(Owner)

(Date)

Recommended _____
(Owner's Engineer)

(Date)

Accepted [Signature]
(Contractor)

10.22.21
(Date)

AGENDA ITEM COMMENTARY

Meeting Date: November 9, 2020
Board: Sallisaw Municipal Authority
Subject: Electric Distribution Line

ITEM TITLE: Discuss and Consider Approval of Contract for Professional Services with Olsson, Inc. of Fayetteville, Arkansas, for Engineering and Support Services Related to a new 12.47 kV Electric Distribution Line, in an *Amount Not to Exceed* \$224,930.00; and, Authorization for the General Manager to Sign the Agreement and any Other Necessary Documents Related to this Contract

INITIATOR: General Manager

STAFF INFORMATION SOURCE: Olsson, Inc.

BACKGROUND: This agreement is for engineering, bidding and construction support of a new 12.47 kV electric distribution line to serve the Sallisaw Landfill Facility and the new methane plant.

In discussions with Olsson, it was decided to go with a not to exceed amount due to possible design requirements related to the railroad crossing and the LiDar Survey (Drone survey).

EXHIBITS: 1. Olsson.SMA.Electric Line Engineering

KEY ISSUES:

1. Contract is a not to exceed amount of \$224,930.00.
2. Olsson will provide engineering, bidding and construction support services.

FUNDING SOURCE: SMA and Series 2020 Bond Funds.
090-601-55508

RECOMMENDATION: Staff recommends approval of the agreement and authorization for the General Manager to sign the agreement.



LETTER AGREEMENT FOR PROFESSIONAL SERVICES

10/22/2020

Sallisaw Municipal Authority
Attn: Keith Skelton, City Manager
115 East Choctaw, PO Box 525
Sallisaw, OK 74955

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**
12.47 kV Distribution Line Design to City Owned Landfill (the "Project")
Located in Sallisaw, OK

Dear Mr. Skelton:

It is our understanding that the Sallisaw Municipal Authority ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the following services ("Scope of Services") to Client for the Project: as more specifically described in "Scope of Services" attached hereto. Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: 10 days after Notice to Proceed

Anticipated Completion Date: 17 weeks after start date

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

COMPENSATION

Time and Materials Not to Exceed (TMNTE) Client shall pay to Olsson for the performance of the Scope of Services the actual time of personnel performing such services in accordance with the Rate Sheet and all actual reimbursable expenses will be subject to a 10% markup. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

Cost Summary

The table below lists Olsson's proposed costs for completing this project.

Work Category	Cost
Project Management	\$21,220.00
Design w/o Railroad crossing	\$103,300.00
Railroad Design	\$12,500.00
Survey and Staking	\$47,000.00
UAV LiDAR Survey	\$12,950.00
Permitting	\$3,960.00
Bidding & Construction Support	\$22,500.00
Desk top review of environmental issues/concerns	\$1,500.00
TOTAL:	\$224,930.00

TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be Keith Skelton.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

OLSSON, INC.

By 
Ron Mersch, Office Leader

By 
Rusty Hartman, Team Leader

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

Sallisaw Municipal Authority

By _____
Signature

Print Name _____

Title _____

Dated _____

Attachments

General Provisions

Scope of Services

Standard Labor Rate Schedule

Reimbursable Expense Schedule

GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated 10/22/2020 between Sallisaw Municipal Authority ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

SECTION 1—OLSSON'S SCOPE OF SERVICES

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

SECTION 2—ADDITIONAL SERVICES

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

SECTION 3—CLIENT'S RESPONSIBILITIES

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson

harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

SECTION 4—MEANING OF TERMS

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the

construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with

diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

SECTION 5—TERMINATION

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any

fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

SECTION 6—DISPUTE RESOLUTION

6.1. Mediation

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

6.2 Arbitration or Litigation

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

6.3 Certification of Merit

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent

professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

7.2 Electronic Files

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

7.3 Opinion of Probable Cost

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed

in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

7.4 Prevailing Wages

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

7.5 Samples

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

7.6 Standard of Care

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

7.7 Force Majeure

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

7.8 Equal Employment Opportunity

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in

employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

7.9 Confidentiality

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and

photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous

Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

7.11 Controlling Law and Venue

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

7.12 Subconsultants

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

7.13 Assignment

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

7.14 Indemnity

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

7.15 Limitation on Damages

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s)

or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

7.16 Entire Agreement

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.



SCOPE OF SERVICES

Sallisaw Municipal Authority 12.47 kV Distribution Line to City Landfill

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated October 18, 2020 between the Sallisaw Municipal Authority ("Client") and Olsson, Inc. ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is as indicated below.

GENERAL

Olsson has acquainted itself with the information provided by Client relative to the project and based upon such information offers to provide the services described below for the project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property.

PROJECT DESCRIPTION

Project Description: Sallisaw Municipal Authority 12.47 Distribution Line to the Landfill

SCOPE OF SERVICES

Olsson will provide the following services (Scope of Services) to Client for the Project:

1. PROJECT MANAGEMENT

Task 100001 – Project Management

Olsson will coordinate the design with internal and external groups, review provided information and prepare deliverables.

- 30% Design Phase
 - During the 30% Design Phase, Olsson will perform necessary site visits, collect survey data, set up the PLS-CADD model, calculate pole heights and classes, propose anchor locations, and prepare Plan View Drawings, Assembly Drawings.
- 90% Design Phase
 - During the 90% Design Phase, Olsson will complete Plan & Profile Drawings, Structure Drawings, and Assembly Drawings, submit Bill of Materials, prepare all documents to a 90% level, incorporate requested changes from design review(s) into a final Issued for Construction Plan set, and attend one pre-bid meeting.
- Bidding & Construction Phase
 - During the Bidding and Construction Services phase of the project, Olsson will attend one pre-construction conference, be available for answering design questions (approximately 3 hours per week) and conduct up to 5 site visits during construction to observe progress and be on site for any custom engineered pole installations. Olsson will attend (via conference call) up to 5 project meetings.

2. BOUNDARY AND TOPOGRAPHIC SURVEY

Task 200001 – Survey

- **TOPOGRAPHIC SURVEY**
 - Olsson will collect conventional Topographic Survey data for the proposed electric line route, from the railroad crossing, south to the land fill area. The Topographic Survey data shall depict contours at a 1' vertical interval, all physical improvements including buildings, driveways, fencing, vegetation, existing storm sewer systems, and visible utilities, as well as underground utilities as located by Oklahoma One-Call system. Survey shall be tied vertically to the NAVD 1988 Vertical Datum and horizontally to the Oklahoma State Plane Coordinate System NAD 83–North Zone-US Survey foot. Olsson's fee does not include preparation of a deliverable survey in paper format. Survey provided will be in AutoCad format only.
 - Utility location and mapping is for horizontal location of above ground and underground utilities only. Utility depths will not be obtained or indicated on the topographic survey. Survey of utilities will be based on tracing and marking by One Call and / or a private utility locator. By signing this contract, the client understands and acknowledges that utility mapping is not exact and it is possible that not all utility lines will be located. Olsson is not responsible for miss-marked or unmarked utilities.
- **Right of Way Data**
 - Olsson will collect enough road and railroad right of way data, to determine the location of the railroad right of way and road rights of way, along the proposed electric line route, as shown on the attached exhibit.
- **CONSTRUCTION STAKING**
 - Olsson will provide construction staking for approximately 150 structures and guys for the proposed electric line. This estimate is for a 1 time staking which can be broken up into as many as four trips to the site. Any additional staking, re-staking, or additional trips will be billed at our standard hourly rates, plus expenses.

Task 200002 – UAV LiDAR Survey

Unmanned Aerial Vehicle (UAV) LiDAR Survey

Intent: Generate a Digital Terrain Model (DTM) from LiDAR data collected by a high precision LiDAR sensor mounted to an Olsson UAV platform. This DTM will be tested for accuracy using survey validation points to ensure it meets the national mapping accuracy standards for 1-foot contours.

Survey Limits: The UAV LiDAR Survey will include approximately 82-acres encompassed within the area shown in the attached Exhibit "A".

Project Supervision: The UAV LiDAR Survey will be conducted under the supervision of a professional land surveyor and certified commercial UAV pilot.

Client Responsibility: The Client will provide access to the site and permit the use of UAV's above the property.

Units: The survey units shall be US Survey Feet.

Coordinate System: Horizontal coordinates shall be based on the State Plane Coordinate System scaled to ground. Vertical coordinates shall be based on the North American Vertical Datum (NAVD88) using GEOID 12A CONUS.

Ground Control: Approximately seven (7) ground control targets will be established.

LiDAR Point Cloud Classifications: The LiDAR point cloud will be separated into the following levels High Vegetation, Low Vegetation, Structures, Ground, and Noise.

LiDAR Point Colorization: Aerial photos collected by the UAV will be used to colorize the LiDAR point cloud.

Validation Points: The DTM will be tested for accuracy using twenty (20) check points for non-vegetated areas.

DTM Vertical Accuracy: The targeted Vertical Accuracy Class will be 5 cm for non-vegetated areas as defined by ASPRS Mapping Standards.

Contour Interval: The contour interval shall be 1-foot.

Deliverables:

- **Design Files:**
 - AutoCAD .dwg file
 - Digital Terrain Map and contours at 1-foot intervals
 - Planimetric line work for railroad and existing power lines
 - Elevations of existing top of rail ($\pm 0.20'$)
- **Aerial Image:** Orthorectified aerial image with 3"/pixel resolution.

Assumptions: A traditional ground survey will be needed to collect detailed planimetric information such as buildings, utilities, tracks, sidewalks, fences, retaining walls, curbs, roadways, and engineering tie-in points (if needed).

3. LINE DESIGN

Task 300001 – Line Design and Relocation

- DISTRIBUTION LINE
- Design approximately 3.86 miles of 12.47 kV distribution line with 1/0 ACSR Raven conductor for the phases and neutral. See the attached exhibit for assumed alignment.
 - Olsson will utilize Rural Utility Service (RUS) design criteria and structure assemblies in accordance with National Electric Safety Code (NESC) requirements.
 - NESC Heavy Loading District Grade B will be used for the design.
 - Olsson will create standard assembly drawings for distribution design using fiberglass crossarms at deadend and corner locations.

- Poles adjacent to the railroad crossing will be specified as wood pole equivalent steel

Task 300003 – Quality Assurance/Quality Control

- Quality reviews by the project team will be conducted at the 30%, 90%, IFC, and 100% project stages for calculations and deliverables.

4. PERMITTING

Task 400001 – Miscellaneous Permitting

- Olsson will develop application documents and exhibits required by State and County ROW permitting where required.
- Olsson will develop application documents and exhibits required for the Railroad crossing permit
- The Sallisaw Municipal Authority to assemble, sign, and submit all permit applications

5. BIDDING AND CONSTRUCTION SERVICES

Task 500001 – Bidding Phase Services

- Olsson will support the Sallisaw Municipal Authority in selecting a steel pole vendor by providing a technical drawing package, specifications, evaluating bids received, recommending award of bid, and reviewing shop drawings from selected bidder.
- Olsson will prepare bidding documents for all contracts for review by the Client. Bidding documents shall include bid invitation, contract form(s), contract conditions, IFC drawings, specifications, bid form(s), Client's insurance requirements, and other pertinent forms and information, unless otherwise directed by Client.
- Olsson will not assist in obtaining bids from suppliers for major equipment components to be incorporated into the project, except for steel poles.
- Olsson will assist in obtaining bids from prime contractors for construction of the project.
- Olsson will conduct bid letting(s), evaluate bids, and provide recommendations to the Client for awarding contract(s), unless otherwise directed by the Client.

Task 500002 – Construction Phase Services

- Olsson will conduct final construction review to determine if the project has been completed in accordance with contract documents; and determine if Contractor has fulfilled all obligations so that approval can be given for final payment to Contractor.
- During the 100% Post-Construction Services phase of the project, Olsson will draft the as-built redline markups prepared and provided by the contractor.

Assumptions

Olsson has included the following assumptions in our pricing:

- Minor alternative alignments will be evaluated specifically around the railroad.
- The line will be spotted in public ROW and easements are not expected to be acquired for the project.
- No custom engineered poles will be designed, wood pole equivalent steel poles will be utilized at railroad crossings.
- No offset stakes will be provided during staking
- Expected permits for this project include ODOT, county road department and KCS railroad.
- No environmental permits are included in this scope of work. A desk top review of environmental issues will be performed as a line item for the project. Further investigation is outside the scope of work.

Deliverables

The following items will be submitted to the Sallisaw Municipal Authority:

- 30% Deliverables:
 - PDF format of 30% plans
- Steel Pole Bid Package
 - Drawings & Specifications
- 90% Deliverables:
 - 1 half-size hard copy of 90% Plans
 - Electronic PDF copy of 90% Plans
 - Bill of Material
- IFC Deliverables
 - 1 full-size hard copy of IFC Plans
 - Cover Sheet
 - Plan & Profiles
 - Staking Sheets
 - Structure drawings
 - Assembly drawings
 - Stringing Charts
 - Electronic PDF copies of IFC Plans
 - Bill of Material
 - Specifications
- Construction Phase Deliverables:
 - Updated plans for clarifying design if required
- 100% Deliverables:
 - 1 full-size hard copy of As-Builts
 - Electronic PDF copy of As-Builts

Extra Work

The following items are not included in this proposal and not expected to be necessary, but may be added by amendment:

- Redesign for owner convenience
- Additional surveying for Construction or Post-Construction Phases

The following items are not included in this proposal and could be expected to be necessary, but may be added by amendment:

- Complete environmental study

Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services **without Client's prior written approval.**

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed and barring circumstances beyond our control, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: Within 10 business days of Notice to Proceed

Anticipated Design Completion Date: 17 weeks after start date

COMPENSATION

Time and Materials Not to Exceed (TMNTE) Client shall pay to Olsson for the performance of the Scope of Services the actual time of personnel performing such services in accordance with the Rate Sheet and all actual reimbursable expenses will be subject to a 10% markup. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

Cost Summary

The table below lists Olsson's proposed costs for completing this project.

Work Category	Cost
Project Management	\$21,220.00
Design w/o Railroad crossing	\$103,300.00
Railroad Design	\$12,500.00
Survey and Staking	\$47,000.00
UAV LiDAR Survey	\$12,950.00
Permitting	\$3,960.00
Bidding & Construction Support	\$22,500.00
Desk top review of environmental issues/concerns	\$1,500.00
TOTAL:	\$224,930.00

TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

If this Work Order satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain a copy for your files and return an executed original to Olsson, 601 P Street, Suite 200, Lincoln, NE 68508.

OLSSON, INC.

By 
Ron Mersch, Office Leader

By 
Rusty Hartman, Team Leader

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept this Work Order, please sign:

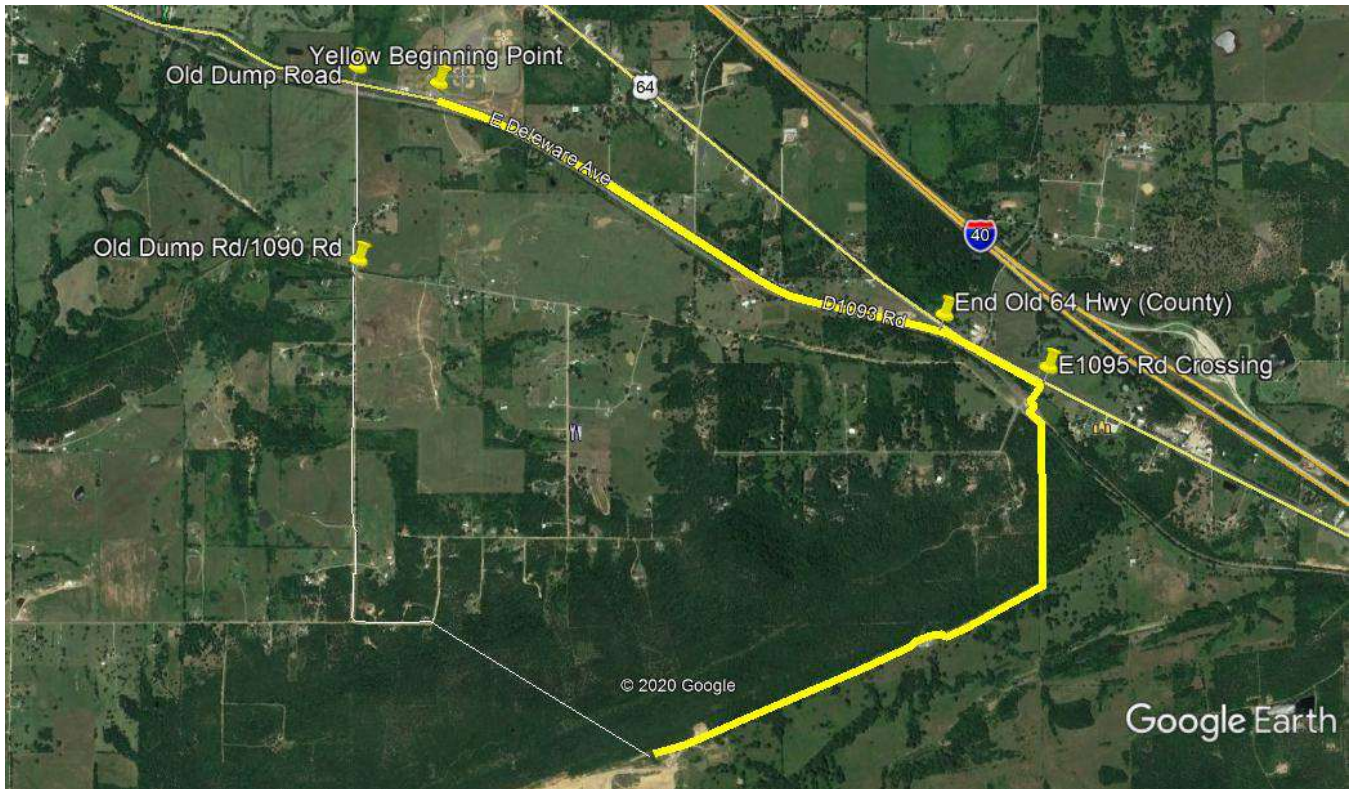
Sallisaw Municipal Authority

By _____
Signature

Print Name _____

Title _____

Dated: _____



Project Limits



UAV LiDAR Survey Limits

OLSSON POWER DELIVERY BILLING RATE SCHEDULE

2020-2021 LABOR RATES

<u>Description</u>	<u>Range</u>
Technical Leader.....	210 – 285
Team Leader.....	215 – 245
Senior Engineer.....	200 – 255
Associate Engineer	125 – 155
Assistant Engineer	90 – 130
Design Technical Manager.....	110 – 155
Senior Technician.....	100 – 130
Associate Technician.....	75 – 110
Senior Project Specialist.....	110 – 140
Project Specialist.....	95 – 120
Junior Technician Level 1	55 – 70
Junior Technician Level 2	65 – 90
Junior Technician Level 3	75 – 90
Senior Administrative Coordinator	75 – 100
Administrative Coordinator	60 – 85

Note:

1. Special Services not included in above categories will be provided on a Special Labor Rate Schedule.

Please contact the Project Manager for special services not included above (Survey, Field Operations, Special Inspection, Construction Observation, Geotechnical, Non-Destructive Testing, Drilling, etc.) and they will provide their Special Services Labor Rate Schedule for you.

REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

<u>Classification</u>	<u>Cost</u>
Automobiles (Personal Vehicle)	\$0.575/mile*
Suburban's and Pick-Ups	\$0.75/mile*
Automobiles (Olsson Vehicle)	\$85.00/day
Other Travel or Lodging Cost	Actual Cost
Meals	Actual Cost
Printing and Duplication including Mylars and Linens	
In-House	Actual Cost
Outside	Actual Cost+10%
Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery	Actual Cost
Film and Photo Developing	Actual Cost+10%
Telephone and Fax Transmissions	Actual Cost+10%
Miscellaneous Materials & Supplies Applicable to this Project	Actual Cost+10%
Copies of Deeds, Easements or other Project Related Documents	Actual Cost+10%
Fees for Applications or Permits	Actual Cost+10%
Sub-Consultants	Actual Cost+10%
Taxes Levied on Services and Reimbursable Expenses	Actual Cost

*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

AGENDA ITEM COMMENTARY

Meeting Date: November 9, 2020
Board: Sallisaw Municipal Authority
Subject: Video Retransmission Negotiations

ITEM TITLE: Discussion and Possible Guidance to Staff Concerning Current and Upcoming Retransmission Contract Negotiations with Programmers

INITIATOR: General Manager
Director of Finance

STAFF INFORMATION SOURCE: Uptown Services (Consultant)
Programmers

BACKGROUND: Our consultant is currently in negotiations with various programmers for renewal of Retransmission Agreements.

Staff will provide more information at the meeting.

EXHIBITS:

KEY ISSUES:

1. Increasing cost of retransmission fees.
2. Cost of the agreements are approaching \$6.00 per sub, with one current negotiation exceeding \$6.00 in 2023.
3. Increasing cost of retransmission fees place a burden on our customers and their ability to maintain their video subscriptions with DiamondNet.

FUNDING SOURCE: Retransmission fees are passed to the subscriber at cost.

RECOMMENDATION: Discuss and provide guidance to staff.

AGENDA ITEM COMMENTARY

Meeting Date: November 9, 2020
Board: Sallisaw Municipal Authority
Subject: FY 2020 Utility Report

ITEM TITLE: Presentation of the FY 2020 Utility Report for the Period of July 1, 2019 through June 30, 2020

INITIATOR: City Manager
Director of Finance

STAFF INFORMATION SOURCE: Finance and Utility Records

BACKGROUND: Staff will present the FY 2020 Utility Report to the Board for review. This report should be reviewed prior to the FY 2022 budget process.

EXHIBITS:

KEY ISSUES:

- Total revenues and requirements of all city utilities.
- Does each utility operate in the black.
- Are utility rates sufficient for each utility.
- Sallisaw utility rates vs. the utility rates of other public power communities.
- Total kWh purchased from GRDA and sold to customers of the city.
- Total gallons of water treated, sold and accounted for.
- Total tonnage taken in at the landfill facility.
- Life of site of the landfill facility.
- Future projects related to city utilities and how those projects will be funded.
- Transfer of funding from the SMA to the City of Sallisaw General Fund.

FUNDING SOURCE: NA

RECOMMENDATION: