

Operations, Maintenance and Management Services Agreement

THIS AGREEMENT is entered into this 21st day of December 2015, by and between

The **City of Moore, Oklahoma**, a municipal corporation created under the laws of the State of Oklahoma, and the **Moore Public Works Authority**, a public trust created under the laws of the State of Oklahoma, whose sole beneficiary is the City of Moore, Oklahoma with its principal address at 301 North Broadway, Moore, Oklahoma 73160 (collectively hereinafter referred to as "MOORE")

and

Veolia Water North America - Central, LLC, with offices at 700 E. Butterfield Road, Suite 201, Lombard, IL 60148 (hereinafter "VWNA").

WHEREAS, MOORE owns and contracts for the operation and maintenance of certain land, buildings and equipment more particularly described on Appendix B "Facilities and Project Description";

WHEREAS, MOORE desires to contract with VWNA to perform the operation, maintenance repair, and customer service functions for the compensation provided for herein; and,

WHEREAS, VWNA desires to provide the services to MOORE, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, MOORE and VWNA agree as follows:

1. General

- 1.1 MOORE and VWNA hereby agree to continue operation and maintenance consistent with the same terms and conditions contained in that certain Third Amended Temporary Operation and Maintenance Services Agreement ("Temporary O&M Agreement") for the period from December 10, 2015, until December 31, 2015, and the then current Annual Fee (as defined in the Temporary O&M Agreement) shall be pro-rated for the extension period. MOORE and VWNA further agree that beginning on January 1, 2016, MOORE and VWNA will commence operation and maintenance under the terms and conditions contained in this Agreement.
- 1.2 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.

- 1.3 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by MOORE shall remain the exclusive property of MOORE unless specifically provided for otherwise in this Agreement.
- 1.4 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oklahoma.
- 1.5 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.
- 1.6 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt requested; or received by the party for which notice is intended if given in any other manner.
- 1.7 This Agreement, including Appendices A through F, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "VWNA" and "MOORE" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.8 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.9 It is understood that the relationship of VWNA to MOORE is that of independent contractor. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that VWNA is to supply professional engineering services to MOORE unless specifically stated in this Agreement to the contrary.
- 1.10 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees which are directly attributed to such litigation in addition to any other relief to which it may be entitled.
- 1.11 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).

- 1.12 Prior to the commencement of work under this Agreement, each party shall designate in writing an employee or other representative of the designating party who shall have full authority to approve changes in the Scope of Work and compensation therefore, execute written Change Orders reflecting such changes, render decisions promptly, and furnish information expeditiously to the other party when necessary.
- 1.13 This Agreement shall be interpreted in accordance with its plain meaning and not strictly for or against either party hereto.

2. VWNA' Services – General

- 2.1 VWNA shall provide a sufficient number of certified and qualified personnel, including management, administrative, operational, technical, laboratory and clerical, who meet relevant State of Oklahoma requirements and certifications regarding wastewater treatment operations, maintenance and management and are capable and demonstrate experience necessary to operate the facilities covered by this Agreement.
- 2.2 VWNA shall provide ongoing training and education for appropriate personnel in all necessary areas of modern wastewater process control, maintenance, safety, and supervisory skills.
- 2.3 VWNA shall develop and/or supply and utilize computerized programs for maintenance, process control, cost accounting, and laboratory Quality Assurance/Quality Control. Such programs shall be capable of readily providing historical data and trends.
- 2.4 Within three (3) months after VWNA begins service under this Agreement, VWNA will provide a physical inventory of MOORE's vehicles and equipment in use at the Project and a general statement as to the condition of each vehicle or piece of equipment.
- 2.5 VWNA will provide MOORE with a physical inventory of chemicals and other consumables on hand when VWNA begins services under this Agreement. VWNA will provide MOORE with the same quantity of chemicals or equivalent upon termination of this Agreement.
- 2.6 VWNA shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by MOORE and assist MOORE in enforcing existing equipment warranties and guarantees.
- 2.7 VWNA shall provide MOORE with full documentation that preventive maintenance is being performed on MOORE's owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be

determined by MOORE. Such a maintenance program must include documentation of corrective and preventive maintenance and a spare parts inventory.

- 2.8 VWNA shall operate, maintain and/or monitor the Project on a 24-hour per day, seven day per week schedule.
- 2.9 Visits may be made at a reasonable time by MOORE's officers so designated by MOORE's representative. Keys for the Project shall be provided to MOORE by VWNA for such visits. All visitors to the Project shall comply with VWNA' operating and safety procedures.
- 2.10 VWNA will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to MOORE regarding the need, if any, for MOORE to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to VWNA' operations hereunder and federal regulations promulgated pursuant to the Americans With Disability Act ("ADA"). Nothing herein shall be construed to place upon VWNA a duty to find and report violations of either the safety laws or the ADA at the Facility.
- 2.11 VWNA may modify the process and/or facilities to achieve the objectives of this Agreement and charge the Costs to the Maintenance and Repair Limit; provided, however, no modification shall be without MOORE's prior written approval if the complete modification Cost shall be in excess of One Thousand Dollars (\$1,000).
- 2.12 In any emergency affecting the safety of persons or property, VWNA may act without written amendment or Change Order, at VWNA' discretion, to prevent threatened damage, injury or loss. VWNA shall be compensated by MOORE for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include VWNA' non-labor direct Costs for the emergency work. Nothing contained in this Section shall impose upon VWNA a duty to perform any emergency work absent a Change Order and failure to perform any such emergency work shall not impose upon VWNA any liability for errors and omissions.
- 2.13 As required by law, permit or court order, VWNA will prepare plant performance reports and submit them to MOORE for signature and transmittal to appropriate authorities. These reports will include the quarterly reports and system evaluations identified in the Agreed Orders for the sewer system.
- 2.14 VWNA will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees. VWNA shall additionally provide technical and analytical services to MOORE to assist MOORE in managing MOORE's Industrial Pretreatment Program including sampling, monitoring and preparation of the required reports.

- 2.15 VWNA will provide for the collection and hauling of solid waste, screenings, grit, sludge and scum ("Waste") to MOORE's existing or approved disposal sites and MOORE shall retain the contract directly with any approved disposal sites. It shall be the sole right and responsibility of MOORE to designate, approve or select disposal sites to be used by VWNA for MOORE's waste materials. All Waste and/or byproduct treated and/or generated during VWNA' performance of services is and shall remain the sole and exclusive property of MOORE and the cost of treatment and transportation thereto shall be VWNA' sole cost and expense and the cost of disposal shall be MOORE's sole cost and expense. All manifests or other documentation required for disposal of Waste shall be signed by or in the name of MOORE.
 - 2.16 VWNA shall provide MOORE with a listing of recommended capital improvements that VWNA believes will be required for any of the facilities covered by the Agreement in conjunction with MOORE's city budget preparation process for each fiscal year. Subject to the terms of this Agreement, VWNA shall not be relieved of its responsibilities to perform the services required hereunder if the recommendations are not implemented.
 - 2.17 VWNA shall use reasonable efforts consistent with best industry practices and the Agreement to control odors from the Facility so that no disruption of adjacent facilities occurs. VWNA, in conjunction with MOORE, shall develop a program that identifies procedures for certifying and documenting odor complaints, and shall establish procedures to address recurrent failures of the odor control program.
 - 2.18 VWNA shall comply with the requirements of MOORE regarding affirmative action and provisions for minority hiring; in addition, VWNA will adhere to the Federal Contract Provisions set forth on Appendix E for all projects and jobs funded with Federal funds, but only for the scope of such Federal jobs and projects.
 - 2.19 VWNA shall provide MOORE with a full accounting of all expenditures at intervals and in sufficient detail as may be determined by MOORE, and assist MOORE in the preparation of annual operating budgets.
3. VWNA' Scope of Services – Water and Wastewater Treatment
 - 3.1 This Article shall apply to VWNA' OM&M services for MOORE's wastewater treatment system.
 - 3.2 Within the design capacity and capabilities of the wastewater treatment plant described in detail in Appendix B, VWNA will manage, operate and maintain the wastewater treatment plant designed to treat nine (9) million gallons a day so that

effluent discharged from the Plant's outfalls meets the requirements specified in Appendix C-1. VWNA shall monitor all wastewater entering the Plant and treat all such wastewater in accordance with the terms of this Agreement and applicable law.

3.3 Subject to the availability of funds within the Maintenance and Repair Limit, VWNA will perform all Maintenance and Repairs for the Wastewater portion of the Project, and submit a monthly accounting to MOORE along with a detailed invoice, if Maintenance and Repair expenditures for the Project exceed the Maintenance and Repair Limit specified in Section 7.1.

3.4 VWNA will pay all Costs incurred in normal Wastewater operations.

3.5 VWNA will fully and faithfully perform its tasks and responsibilities in connection with the water system as set forth in Appendix B, Subsections 2.1 and 2.2.

4. VWNA Scope of Services - Wastewater Collection System

4.1 This Article shall apply to VWNA' maintenance and repair services for MOORE's wastewater collection system serving MOORE. The collection system is described in Appendix B. Any additional services or lines outside the services outlined in Appendix B will constitute a change of scope. VWNA shall not be responsible for completing any new service connections unless the new service connections are paid by a third party or MOORE agrees to pay for such service as a Change in Scope hereunder.

4.2 VWNA will maintain and repair the wastewater collection system. VWNA's responsibility for the wastewater collection system shall end at the customer's property line.

4.3 Costs associated with the services described in this Article shall be charged to the Maintenance and Repair Limit specified in Section 7.1.

4.4 Sewer Back-Up Procedure. From and after the inception of the Term of this Agreement, VWNA shall establish (i) a routine, normal sewer line preventative maintenance program, and (ii) corrective procedures to be implemented in the event of any personal injury or property damage resulting from a sewer back-up which will consist of the following:

4.4.1 Upon receipt of a citizen notice, VWNA will determine whether the cause of the sewer back-up was an obstruction in MOORE's lateral line or the citizen's house line;

4.4.2 If the obstruction is in MOORE's lateral line, VWNA will (i) remove the cause of the sewer line obstruction by implementation of its corrective procedures; (ii) document the approximate date and time of the obstruction;

(iii) determine the extent of the personal injury or property damage, if any;
(iv) contact a predetermined remediation company to clean up the sewer back-up and to minimize any damage, the cost of which will be paid by MOORE; and (v) provide notice to MOORE's insurance carrier of the potential loss claim;

4.4.3 If the sewer line back-up is the citizen's house line, VWNA will advise the citizen to contact a remediation service company and citizen's homeowner's insurance carrier; and

4.4.4 VWNA shall provide a customer assistance program to qualified MOORE water utility customers when property damage complaints are filed by MOORE water utility customers. Upon receipt of written property damage complaints from Moore water utility customers, VWNA shall:

4.4.4.1 After it has been determined that an overflow was due to blockage in a Moore sewer main, VWNA will verify that the residence or location qualifies for customer assistance program services by performing the following:

- i. VWNA will verify that the location is not on the official "Back Flow Prevention List" maintained by MOORE;
- ii. VWNA will verify that the location is not a church or business; and
- iii. VWNA will verify that the location is not on the list of ineligible locations which ineligible locations are determined by MOORE.

4.4.4.2 If VWNA determines that a customer is a MOORE qualified water utility customer, VWNA will explain the customer assistance program to the qualified customer and document their choice to participate in the customer assistance program in writing.

4.4.4.3 If a MOORE qualified water utility customer chooses not to participate in the MOORE customer assistance program, VWNA will take no further action.

4.4.4.4 If the MOORE qualified water utility customer chooses to participate in the customer assistance program, VWNA will do the following:

- i. Take digital photographs of the damaged area;

- ii. Contact the third party clean-up contractor; and
- iii. Forward all photographs and documentation to the Moore Risk Management group on the first business day following the written election by the MOORE qualified water utility customer to participate in the customer assistance program.

4.4.4.5 MOORE, or MOORE's independent insurance carrier, shall be responsible for payment of any and all charges by the third party clean-up contractor.

4.4.5 After completing the procedure set forth in Subsections 4.4.1 through 4.4.4 above, VWNA shall have no further responsibility or liability to MOORE or the citizen(s) for the personal injury or property damage caused by the sewer back-up or the consequences thereof.

5. VWNA' Scope of Services –Record collection and keeping

- 5.1 This Article shall apply to VWNA' operation, maintenance and management services for MOORE's, record collection and record keeping.
- 5.2 On a monthly basis VWNA shall provide MOORE the information in VWNA's possession necessary for MOORE to calculate and invoice the amount owed by each customer of MOORE connected to the sewer system ("Customer") so MOORE may prepare and mail an itemized invoice to each Customer for such service.
- 5.3 Excluded from VWNA's scope of work is: invoicing and collection of all available revenue from sales, connection fees, security deposits, reconnect fees, late payment charges, taxes collected and all other monies due from Customer, as well as the legal action to collect amounts and anything else associated with billings and collections from Customers.

6. MOORE's Duties

- 6.1 VWNA will prepare a list of recommended Capital Expenditures and will submit this list to MOORE annually. MOORE will review the list of Capital Expenditures and determine when or if it shall direct VWNA to make those Capital Expenditures. For those Capital Expenditures which are approved, MOORE will negotiate with VWNA regarding any required Change in Scope necessary to authorize VWNA to complete the approved Capital Expenditures and to pay VWNA for making those Capital Expenditures. MOORE shall fund all approved Capital Expenditures, which shall be performed by VWNA under an appropriate Change in Scope amendment to this Agreement. Priority shall be given to safety and the ADA related expenses described in Section 2.10. Notwithstanding anything to the contrary in this Agreement, any claim, loss, damage, or injury resulting from MOORE's failure to provide Capital Expenditures and/or funds in excess of the Maintenance and Repair Limit when reasonably requested by VWNA shall be the sole responsibility of MOORE.
- 6.2 MOORE shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to MOORE and are not transferred to VWNA under this Agreement.
- 6.3 MOORE shall pay all sales, excise, *ad valorem*, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon VWNA' net income and/or payroll taxes for VWNA employees. In the event VWNA is required to pay any sales tax or use taxes on the value of the services provided by VWNA hereunder or the services provided by any subcontractor of VWNA, such payments shall be reimbursed by MOORE unless MOORE furnishes a valid and properly executed exemption certificate relieving MOORE and VWNA of the obligation for such taxes. In the event MOORE furnishes an exemption certificate which is invalid or not applicable to services by VWNA, MOORE shall indemnify VWNA for any taxes, interest, penalties, and increment costs, expenses or fees which it may incur as a result of VWNA' reliance on such certificate.
- 6.4 MOORE shall provide VWNA, within a reasonable time after request and on an "as available" basis, with the temporary use of any piece of MOORE's heavy equipment that is available so that VWNA may discharge its obligations under this Agreement in the most cost-effective manner.
- 6.5 MOORE shall provide all registrations and licenses for MOORE's vehicles used in connection with the Project.
- 6.6 MOORE shall provide for VWNA' exclusive use of all vehicles and equipment presently in full-time use at the Project.

- 6.7 MOORE shall provide for VWNA' entry into existing disposal sites for disposal of garbage, screenings, grit, sludge and scum.
- 6.8 MOORE shall provide the Project with appropriate security devices to protect against any losses resulting from the theft, damage, or unauthorized use of property owned by MOORE and shall accept liability for such losses except to the extent such losses are directly caused by the negligent acts or omissions of VWNA.
- 6.9 MOORE warrants that during the interim period between the initial Project inspection by VWNA and the Commencement Date, the plants, facilities and equipment have been operated only in the normal course of business, all scheduled and proper maintenance have been performed and there are no issues known to MOORE regarding the condition of the Project, and facilities composing the Project and/or any equipment used by the Project. MOORE warrants and agrees that it will turn over the plants, facilities and equipment to VWNA in good working order and in compliance with the NPDES Permit(s) and all other applicable laws, rules and regulations.
- 6.10 MOORE shall keep in force any project warranties, guarantees, easements and licenses that have been granted to MOORE and are not transferred to VWNA under this Agreement.
- 6.11 MOORE shall continue to be responsible and pay for the general administration and enforcement of (i) the wastewater and collection system, (ii) MOORE's Industrial Pretreatment Program, (iii) new sewer connections unless VWNA is retained to perform such functions as a Change in Scope hereunder, and (iv) long-term System and Service Area planning. Typical administration costs associated with the above activities include costs such as the services of the auditor, lawyer, and liability insurance.
- 6.12 Notwithstanding anything to the contrary contained herein or otherwise, MOORE shall pay one hundred percent (100%) of all chemical costs for all facilities.

7. Compensation

- 7.1 VWNA' compensation under this Agreement shall consist of an Annual Fee. The Annual Fee for the period January 1, 2016, through December 31, 2016, shall be two million nine hundred fifty-two thousand two hundred eighty-three dollars (\$2,952,283). The Maintenance and Repair Limit included in the Annual Fee is one hundred eight thousand dollars (\$108,000).
- 7.2 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement year, VWNA will rebate the entire difference to MOORE in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, MOORE will pay the

excess to VWNA in accordance with Section 8.3. VWNA will notify MOORE when actual Maintenance and Repair expenditures equal eighty percent (80%) of Maintenance and Repair Limit.

- 7.3 The services being provided under this Agreement are based on reasonably expected overtime for normal breakdowns or services required after hours. Any additional expenses including straight or overtime wages caused by severe weather, a disaster or unplanned event that may be recovered through billing any third party including the State or Federal Government FEMA funds will be billed to MOORE for reimbursement.
- 7.4 The Annual Fee (and Maintenance and Repair Limit included therein) will be increased on January 1, 2017, and annually thereafter by multiplying the existing Annual Fee by the percentage increase in the: (1) Consumer Price Index – All Urban Customers (all items) (Index #CUUR000SA0) weighted 41%; plus (2) Employment Cost Index – Not Seasonally Adjusted, Compensation – Civilian – Workers – Service Occupations (CIU1010000300000I) weighted 53.4%; plus (3) Producer Price Index (Index ID#WPU06) weighted 5.6% for the twelve (12) months prior to the beginning of the period for which an adjusted Annual Fee is being calculated. For purposes of this Agreement, the indices applicable to the calculation of the adjustment to the annual fee shall be the indices published in June of the prior year for the CPI-U and PPI and the index published in Quarter 2 of the prior year for the ECI. An example of the Annual Fee adjustment is provided on Appendix F.

8. Payment of Compensation

- 8.1 One-twelfth (1/12) of the Annual Fee for the current year shall be due and payable on the first of the month for each month that services are provided.
- 8.2 All other compensation to VWNA is due upon receipt of VWNA' invoice and payable within fifteen (15) days.
- 8.3 Any monies payable pursuant to Section 7.2 will be paid within thirty (30) calendar days after the end of each month.
- 8.4 MOORE shall pay interest at an annual rate equal to six percent (6%), said rate of interest not to exceed any limitation provided by law, on payments not paid and received within fifteen (15) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. Scope Changes

9.1 A Change in Scope of services shall occur when and as VWNA' costs of providing services under this Agreement change as a result of:

9.1.1 any change in Project operations, personnel qualifications or staffing or other cost which is a result of an Unforeseen Circumstance;

9.1.2 increases in the flow or influent concentrations above design capacity of the wastewater treatment plant or water system;

9.1.3 increases in the influent flow or loadings above design and permitting limits as demonstrated by a twelve month floating average compared to the twelve month period ending on the effective date of this Agreement (baseline flow and loading information is located in Appendix C-4);

9.1.4 increases or decreases in rates or other related charges (including taxes) imposed upon VWNA by a taxing authority - excluding taxes based on VWNA' net income;

9.1.5 MOORE's request of VWNA and VWNA' consent to provide additional services; and/or

9.1.6 MOORE's funding, installment and implementation of an automatic meter reading system.

9.2 For Changes in Scope described in Sections 9.1.1 through, and including, 9.1.3, the Annual Fee shall be increased by an amount equal to VWNA' additional Cost associated with the Change in Scope plus ten percent (10%). Increases of the Annual Fee as a result of conditions described in Section 9.1.3 shall be retroactive to the beginning of the twelve-month comparison period.

9.3 For Changes in Scope described in Section 9.1.4, the Annual Fee shall be increased (or decreased) by an amount equal to VWNA' additional (reduced) Cost associated with such Change in Scope.

9.4 MOORE and VWNA shall negotiate in good faith an increase in VWNA' Annual Fee for Changes in Scope based on Section 9.1.5.

9.5 MOORE and VWNA shall negotiate in good faith any increase or decrease in VWNA's Annual Fee for Changes in Scope based on Section 9.1.6.

10. Indemnity, Liability and Insurance

10.1 VWNA hereby agrees to indemnify and hold MOORE harmless from any liability or damages for bodily injury, including death, property damages and pollution damages which may arise from VWNA' negligence or willful misconduct under this

Agreement; provided, VVNA shall be liable only for that percentage of total damages that corresponds to its percentage of total negligence or fault.

- 10.2 MOORE agrees to indemnify and hold VVNA harmless from any liability or damage or bodily injury, including death, property damages and pollution damages which may arise from all causes of any kind other than VVNA' negligence or willful misconduct, including, but not limited to, breach of a MOORE warranty.
- 10.3 TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER VVNA NOR MOORE SHALL BE LIABLE TO THE OTHER IN ANY ACTION OR CLAIM FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF PRODUCT OR LOSS OF USE. ANY PROTECTION AGAINST LIABILITY FOR LOSSES OR DAMAGES AFFORDED ANY INDIVIDUAL OR ENTITY BY THESE TERMS SHALL APPLY WHETHER THE ACTION IN WHICH RECOVERY OF DAMAGES IS SOUGHT IS BASED ON CONTRACT, TORT (INCLUDING SOLE, CONCURRENT OR OTHER NEGLIGENCE AND STRICT LIABILITY OF ANY PROTECTED INDIVIDUAL OR ENTITY), STATUTE OR OTHERWISE. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES, WHICH ARE INCONSISTENT WITH THESE TERMS, ARE WAIVED.
- 10.4 VVNA shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date of this Agreement, of the effluent quality requirements provided for in Appendix C that are a result of VVNA' negligence. MOORE will assist VVNA to contest any such fines in administrative proceedings and/or in court prior to any payment by VVNA. VVNA shall pay the cost of any such contest.
- 10.5 MOORE shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on MOORE and/or VVNA that are not a result of VVNA' negligence or are otherwise directly related to the ownership of the Project and shall indemnify and hold VVNA harmless from the payment of any such fines and/or penalties.
- 10.6 TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, VVNA' LIABILITY FOR PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION ARISING UNDER THE AGREEMENT (WHETHER ARISING UNDER BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY) INCLUDING, BUT NOT LIMITED TO ITS INDEMNITY OBLIGATIONS SPECIFIED IN SECTION 10.1 OF THE AGREEMENT, SHALL NOT EXCEED THE ANNUAL FEE, PROVIDED THAT THE FOREGOING LIMITATION SHALL NOT APPLY

TO ANY LOSSES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF VWNA IN BREACH OF VWNA' OBLIGATIONS UNDER THIS AGREEMENT.

- 10.7 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix D. Each party shall provide the other party with satisfactory proof of insurance.
- 10.8 THE PROVISIONS OF SECTIONS 10.1 THROUGH 10.7 ABOVE SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

11. Term, Termination and Default

- 11.1 The initial term of this Agreement shall be ten (10) years commencing January 1, 2016 ("Initial Term"). Thereafter, this Agreement shall be automatically renewed for two successive terms of five (5) years unless either party provides written notice of non-renewal to the other party no less than one hundred and twenty (120) days prior to expiration of the Initial Term.
- 11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party; only after giving written notice of breach; and, except in case of a breach by MOORE for non-payment of VWNA' invoices, in which case termination may be immediate by VWNA, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.
- 11.3 In the event that this Agreement is terminated for any reason prior to the ending date of the Initial Term, MOORE shall pay to VWNA any funds identified in Section 8.2 that have not been paid to VWNA through the date of termination.
- 11.4 Upon notice of termination by MOORE, VWNA shall assist MOORE in assuming operation of the Project. If additional Cost is incurred by VWNA at request of MOORE, MOORE shall pay VWNA such Cost within 15 days of invoice receipt.
- 11.5 Upon termination of this Agreement and all renewals and extensions of it, VWNA will return the Project to MOORE in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by VWNA for use in the operation or maintenance of the Project shall remain the property of VWNA upon termination of this Agreement unless the property was directly paid for by MOORE or MOORE specifically reimbursed VWNA for the cost incurred to purchase the property or this Agreement provides to the contrary.
- 11.6 VWNA has the option to terminate with thirty (30) days prior written notice if VWNA and MOORE do not come to agreement on the change in Annual Fee for a

Change in Scope in Sections 9.1.5 and 9.1.6 as well as for permit changes described in Section C-1 in Exhibit C.

12. Disputes and Force Majeure

12.1 In the event activities by employee groups or unions cause a disruption in VWNA' ability to perform at the Project, MOORE, with VWNA' assistance or VWNA at its own option, may seek appropriate injunctive court orders. During any such disruption, VWNA shall operate the facilities on a reasonably prudent commercial basis until any such disruptions cease.

12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances beyond its reasonable control or force majeure. However, this Section may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.

[Signature Page Follows]

The parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental actions, approvals and consents necessary to bind the parties to the terms of this Agreement have been taken.

**MOORE PUBLIC WORKS
AUTHORITY**

By: Robert Krows

Name: 

Title: VICE CHAIRMAN

Date: 12-21-15

**VEOLIA WATER NORTH AMERICA -
CENTRAL, LLC**

By: 

Name: John M. Wood

Title: Sr. Vice President

Date: 12/30/15

APPROVED by the City Council of the City of Moore, Oklahoma on the 21st day of December, 2015.

ATTEST: (Seal)



City of Moore, Oklahoma

Brock Mitchell
Secretary

Robert Kane
Vice Mayor

CERTIFICATE OF CITY ATTORNEY

The undersigned, as City Attorney for the City of Moore, Oklahoma, an Oklahoma municipal corporation ("MOORE") in this transaction, hereby certifies that (s)he has examined the facts and circumstances surrounding the selection of Veolia Water North America – Central, LLC ("VWNA") and the award and letting of the foregoing contract to VWNA by MOORE, and has found that said selection, award and contracting process comply with the procurement laws of the State of Oklahoma and MOORE and that the foregoing Agreement, once executed by MOORE, is a valid, legal and binding agreement of MOORE.



City Attorney for MOORE

Date: DEC. 22, 2015

APPENDIX A

DEFINITIONS

- A.1 "Adequate Nutrients" means plant influent nitrogen, phosphorus and iron contents proportional to BOD₅ in the ratio of five (5) parts nitrogen, one (1) part phosphorus, and one-half (0.5) part iron for each one hundred (100) parts BOD₅.
- A.2 "Annual Fee" means a predetermined, fixed sum for VWNA' services. The Annual Fee includes Cost and profit.
- A.3 "Biologically Toxic Substances" means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of MOORE's Certificate of Approval. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides and herbicides.
- A.4 "Capital Expenditures" means any expenditures for (1) the purchase of new equipment or facility items that cost more than One Thousand Dollars (\$1,000); or (2) major repairs which significantly extend equipment or facility service life and cost more than Two Thousand Dollars (\$2,000) or (3) expenditures that are planned, non-routine and budgeted by MOORE.
- A.5 "Change in Scope" has the same meaning as in Section 9.
- A.5 "Change Order" means a written agreement between MOORE and VWNA authorizing a Change in Scope.
- A.5 "Commencement Date" shall mean January 1, 2016.
- A.6 "Cost" means all Direct Cost and indirect cost determined on an accrual basis in accordance with generally accepted accounting principles.
- A.7 "Direct Cost" means the actual cost incurred for the direct benefit of the Project including, but not limited to, expenditures for project management and labor, employee benefits, chemicals, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities, tools, memberships and training supplies.
- A.8 "Maintenance" means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or by VWNA to maximize the service life of the equipment, sewer, vehicles and facilities.

- A.9 "Maintenance and Repair Limit" means the total Maintenance and Repair expenditures that VWNA has included in the Annual Fee. Such expenditures exclude any labor costs for VWNA' staff assigned to the Project. VWNA' specialized maintenance personnel, not assigned at the Project, who provide such specialized services such as, but not limited to, vibration, thermographic and electrical analyses, instrumentation maintenance and repair will be charged to the Maintenance and Repair Limit.
- A.10 "Project" means all equipment, vehicles, grounds, rights of way, sewers and facilities described in Appendix B and, where appropriate, the management, operations and maintenance of such.
- A.11 "Repairs" means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, sewer, vehicles or facilities or some component thereof.
- A.12 "Unforeseen Circumstances" shall mean any event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement, including but not limited to (i) an act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war, blockade, terrorist acts, sabotage, insurrection, riot or civil disturbance, (ii) preliminary or final order of any local, province, administrative agency or governmental body of competent jurisdiction, (iii) any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, province or governmental body, (iv) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or work stoppages by employees of VWNA; (v) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project; (vi) the presence of Biologically Toxic Substances or Hazardous Wastes in the influent to the Treatment Facility; and (vi) violations of the City's Industrial Pretreatment Program discharge limits (if applicable) which are of such a quantity and quality so as to cause substantial disruption in the operations or biological activity of the Facility.

APPENDIX B

DESCRIPTION OF PROJECT

VWNA agrees to provide the services necessary for the management, operation and maintenance of the following:

1. Scope of Work – General

- 1.1. VWNA shall operate, maintain and monitor Water and Wastewater Systems on a 24-hour per day, seven day per week schedule.
- 1.2. VWNA shall provide an emergency telephone number to the public, MOORE and other local agencies for after-hours contact. On-call personnel shall respond within one (1) hour of all calls for incidents that cannot be resolved over the phone.
- 1.3. VWNA's business office hours shall coincide with City's office hours. MOORE will provide office space at the new wastewater treatment plant site.
- 1.4. VWNA shall be responsible for repair and maintenance of the water and wastewater systems up to \$108,000 annually. MOORE will reimburse VWNA for repair and maintenance costs above this amount. Said reimbursements shall be at VWNA's cost, without markup from VWNA. VWNA shall purchase materials and services necessary to perform the scope of work directly or through MOORE's purchasing system. VWNA shall implement an inventory control system of all spare parts, which will include critical spare parts ranking and minimum stocking numbers.
- 1.5. VWNA shall be responsible for replacement of belts, lubrication, removal of pumps to de-rag, replacement of chemical pumps purchased by MOORE, various electrical services, and for all repairs, regardless of cost, for VWNA's negligence, or due to lack of maintenance by VWNA.
- 1.6. VWNA shall operate facilities in an energy and chemically efficient manner. MOORE will pay for power costs not paid by Veolia and one-hundred percent (100%) of chemical costs for all facilities. VWNA shall pay twenty-five percent (25%) of power costs up-to the price and usage caps below. Notwithstanding the previous sentence, or anything to the contrary contained herein, VWNA shall not be responsible for any electrical costs in excess of an electrical annual average rate of 0.0748/kwh nor any annual electrical consumption in excess of 15,358,945 annual kilowatt hours. For absence of doubt MOORE shall be responsible for 75% of the power costs below the price and usage caps and costs above the cap amounts.

- 1.7 VWNA shall mow all City owned water & sewer facilities. Weeds, trash, & debris shall be regularly removed from all sites. Equipment, tools, and MOORE assets shall be properly stored & maintained at all times.
- 1.8 VWNA shall install, maintain and continuously update MOORE's Computer Maintenance Management System (CMMS).
- 1.9 VWNA shall assist in creating, maintaining, and continuously updating MOORE's wastewater collection and water distribution on MOORE's GIS system.
- 1.10 VWNA shall provide its own staff communication system to complete work within MOORE. MOORE shall provide certain vehicles for use by VWNA, as determined by MOORE. MOORE will service and maintain all City-owned vehicles, unless damaged due to negligence by VWNA. VWNA shall service and maintain all vehicles owned by VWNA.
- 1.11 VWNA shall provide its own computers and software for plant operations, permit monitoring and compliance, daily reports, normal office functions, and monthly reporting to MOORE and the Oklahoma Department of Environmental Quality (ODEQ).
- 1.12 VWNA shall utilize MOORE-provided computers and software systems for the SCADA system, the Computer Maintenance Management System, and the GIS system, unless otherwise approved by MOORE.
- 1.13 VWNA shall assist MOORE in creating and/or revising water and sewer related ordinances as needed.
- 1.14 VWNA shall submit its list of recommended capital improvements in conjunction with MOORE's budget preparation process for each fiscal year. If approved, MOORE shall make arrangements for the design and construction of said improvements. VWNA shall not be relieved of its responsibility to perform the services required as per the Agreement if the recommendations are not implemented.
- 1.15 VWNA may be required to assist in the preparation of grant applications, loan requests and/or bond issues pursued and authorized by MOORE. VWNA shall provide operational data as necessary for design and construction of water and sewer improvements.
- 1.16 VWNA shall provide technical and operational support in relation to any new or existing utility infrastructure plans, including plans, specifications, and/or contract review. VWNA shall be responsible for providing appropriate personnel to attend design review and preconstruction/construction meetings as needed.

- 1.17 In cases where an emergency or urgency to protect life, property, and the environment occurs, VWNA shall act immediately to preserve life and property and the environment. VWNA shall purchase goods and services as necessary and shall submit vouchers with documentation for payment by MOORE for such services, which shall be available for audit by MOORE.
- 1.18 As MOORE's fiduciary, VWNA shall maintain in good condition, MOORE's operating equipment, buildings, materials, supplies, documents, manuals, specification copies. VWNA shall assist MOORE in the enforcement of warranties, guarantees, and licenses with timely notification of equipment failures.
- 1.19 VWNA shall implement MOORE's CMMS. VWNA shall provide monthly reports to MOORE regarding operational activities, non-routine maintenance expenditures, and outstanding work orders.
- 2.20 VWNA shall organize, set up, and implement a central store for the purpose of controlling inventory used in the maintenance and operations of the water and wastewater systems. All inventories shall be tracked through the CMMS as goods received and goods expended by work order activities. VWNA shall provide statistics of these activities in a quarterly report to MOORE.
- 1.21 VWNA shall conduct an inventory of existing MOORE assets and inventory items with MOORE and enter the information into MOORE's Computer Maintenance Management System within three (3) months of taking over operations. Going forward, VWNA shall continuously track, update, and maintain MOORE's assets and inventory as part of the Computer Maintenance Management System in accordance, as a minimum, with manufactures' recommendations for each piece of equipment. Equipment failures due to maintenance not performed in accordance with O & M Manuals and manufacturers' recommendations shall be replaced at VWNA's expense. Penalties for equipment failures due to lack of proper maintenance of equipment by VWNA may be assessed by MOORE.
- 1.22 VWNA shall assist MOORE in submitting information on all major maintenance and capital improvements needed for each upcoming fiscal year.
- 1.23 VWNA shall annually provide analysis of MOORE's infrastructure needs of repair or replacement to provide a priority listing and cost estimates to justify any budget request for the reported needs. A summary report shall be provided to MOORE no later than March 31st of each Calendar year.
- 1.24 VWNA shall be familiar with and maintain existing Federal, State, and Local permits required to operate MOORE's Water & Wastewater System. VWNA shall

make MOORE aware and assist MOORE in acquiring any new Federal, State, or Local permits required to operate MOORE's Water & Wastewater Systems.

- 1.25 VWNA shall keep copies of all correspondence to and from regulatory agencies with regard to the operation and maintenance of the Water & Wastewater Systems. Such records are considered property of MOORE and shall include, but not be limited to OPDES reporting requirements, and various other State of Oklahoma reports.
- 1.26 VWNA shall ensure sufficient staffing levels of qualified personnel at all times, to perform the required duties.
- 1.27 VWNA shall provide safety equipment in compliance with OSHA.
- 1.28 It is VWNA's responsibility to insure that the treatment, distribution, and collection facilities are to automatically return to operation after power failure events, to prevent OPDES permit violations. To prevent further instances, VWNA shall physically inspect all facilities within two (2) hours after a power failure, and ensure that all equipment, instrumentation, and the SCADA system are working properly.
- 1.29 VWNA shall perform maintenance as follows for all facilities:
 - a. VWNA shall perform all preventative maintenance listed in equipment operations and maintenance manuals and MOORE's facility operation and maintenance manuals at VWNAs cost. This includes lubrications, belt replacements, mechanical and electrical equipment cleaning, pumping packing, flush water, weir cleaning, UV lamp replacement, pump rotation, etc.
 - b. VWNA shall track and manage the routine maintenance and equipment troubleshooting and repairs of all City facilities, equipment and buildings with the Computer Maintenance Management System. This system has a priority assigned to all work order items. Work order items have been assigned a priority based on a criticality review conducted by the existing operations staff. The review assigns a priority from 1 to 24 with 24 being the highest priority for completion. VWNA shall complete all work orders within the following timeframe.

Priority 20 to 24:	24 hours
Priority 15 to 19:	1 week
Priority 10 to 14:	30 days
Priority 5 to 9:	60 days
Priority 1 to 4:	90 days

MOORE will periodically review equipment prioritization with VWNA as needed.

- c. If equipment, instrumentation, vehicles, or the SCADA system are not functioning properly, VWNA shall perform industry standard troubleshooting as outlined in the equipment operations and maintenance manuals and MOORE's facility operations and maintenance manuals. This includes checking circuit-breakers to make sure equipment has power along with other troubleshooting tasks.
- d. If after troubleshooting, equipment or systems are deemed to be in need of repair or replacement, VWNA shall manage the repair or replacement process. VWNA shall obtain quotes from vendors and subcontractors for inspection, diagnostic, repair and replacement as needed. VWNA shall obtain approval from MOORE prior to initiating repairs. MOORE may request VWNA obtain additional quotes if repair costs are deemed too high. All repair costs shall be directly paid for by MOORE without markup from VWNA.
- e. In the event VWNA fails to perform any service under this Agreement in a timely manner, MOORE shall notify VWNA of the issue with a date to remedy the situation. If VWNA fails to perform services by the provided date, MOORE may at its option independently perform the service or hire others to perform the service. In such cases, MOORE will withhold the cost of such services from monthly payments to VWNA. Costs withheld shall include the time and materials for MOORE personnel as well as outside contractors.

1.30 VWNA shall provide certified employees as required by federal, state, and local laws. VWNA shall be responsible for training of personnel to maintain certifications and improve knowledge.

1.31 On federally funded projects VWNA must comply with all applicable federal requirements including but not limited to: Civil Rights, Affirmative Action, Employment Restrictions, Conduct, Lobbying, Copyrights, Religious Activities, Housing and Community Development (HCD) Act of 1974, and all applicable Office of Management and Budget (OMB) Circulars.

2. Management of Water & Wastewater Operations

2.1 **Water Production.** VWNA services shall include the activities described below:

2.1.1 VWNA shall test potable water and maintain chlorine residuals throughout MOORE. Water shall be sampled and confirmed acceptable for consumption per state and federal requirements.

- 2.1.2 VWNA has no responsibility for the quality of water received from the wells, but is responsible for ascertaining that safe drinking water is being delivered to customers.
- 2.1.3 VWNA shall ensure that all water produced for drinking meets or exceeds federal, state, and local laws through regular and required laboratory analysis. VWNA shall be responsible to provide major maintenance and capital improvements needed to provide a safe and sufficient supply of water.
- 2.1.4 VWNA shall annually certify or calibrate all flow meters and repair and replace meters as necessary.
- 2.1.5 VWNA shall maintain a crew for emergency operations and minor repairs of the Water System twenty-four hours/seven days a week as needed. VWNA shall diligently respond to all service calls for water leaks, breaks, or emergencies regarding water production and distribution, and in no event later than one (1) hour after being notified of such incidents.

2.2 Water Distribution. VWNA shall operate and maintain MOORE's water transmission and distribution systems, valves, fire hydrants, and air release valves. VWNA shall diligently respond to all service calls for water leaks, breaks, or emergencies regarding water production and distribution, and in no event later than one (1) hour after being notified of such incidents. VWNA services shall include the activities described below:

- 2.2.1 All distribution valves shall be operated at a minimum of once per year with the date of operation recorded for future reference. Each valve shall be verified to be left in proper operating position and in working condition. As part of this annual "operation", a Global Positioning System (GPS) reading shall be taken.
- 2.2.2 VWNA shall provide technical and operational water information (non-engineering) as needed for grant, loan, and bond application preparation efforts of MOORE.
- 2.2.3 VWNA shall assist City on locating water mains for Call-OKIE.

2.3 Wastewater Collection. VWNA shall operate, maintain, and make minor repairs to MOORE's wastewater collection systems, including mains, force mains, and lift stations. VWNA shall diligently respond to service calls for wastewater line stoppages, overflows, breaks, odors or emergencies regarding wastewater collection and treatment, and in no event later than one (1) hour after being notified of such incidents. VWNA services shall include the activities described below:

- 2.3.1 VWNA shall enter, open hatches, and physically inspect all lift stations for any irregularities, perform other checks, and change pump lead lag sequences a minimum of once per week.
- 2.3.2 VWNA shall inspect for proper operation and clean air relief valves a minimum of once every quarter.
- 2.3.3 VWNA shall annually clean and inspect twenty percent (20%) percent of the sanitary gravity wastewater lines. VWNA shall work with MOORE to determine the priority of the gravity wastewater lines needing to be cleaned. VWNA shall also inspect manholes for corrosion, deterioration, leaks, proper flow, sand accumulation, coating, depressions and notify City of any deficiencies. A Global Positioning System (GPS) reading shall be taken on each manhole inspected. VWNA shall televise the identified trouble spots in the system and note service lateral connection locations. This shall ensure that all blockages, sources of odors or breaks have been cleaned or identified. Traffic control shall be given due consideration to determine the best time to perform the work. In addition, direction of flow in the sewer system shall be considered to reduce the potential for damage from water being forced back up the homeowners' service line and into their residences.
- 2.3.4 VWNA shall provide updates for record keeping and documentation of record drawings associated with the wastewater collection and treatment system, and repairs, maintenance, and construction.
- 2.3.5 Removal of blockage in the wastewater collection lines shall occur only within public easements or right-of-way. The cleaning of house laterals on private property shall not be VWNA's responsibility unless there is a circumstance where the private property line problem may have been caused by VWNA performance of their duties on MOORE's system.
- 2.3.6 When a lift station alarm condition occurs, the SCADA system is designed to notify plant operators. If the alarm is set off during normal work hours, a crew shall be dispatched immediately to diagnose and correct the problem. After normal hours, the on-call person notified by the alarm system shall proceed to the area within one hour to diagnose and repair the problem. All efforts shall be expended to prevent, or minimize, any spills or overflows. In the event of a spill or overflow, VWNA is responsible for cleanup in accordance with state & federal requirements.
- 2.3.7 Twice a year, VWNA shall conduct lift station operation evaluations of all lift stations via SCADA, flow meters, operations logs, and pump run times. Pump run times, proper pump rotation, total pump station flow (if

available), will be compared to the previous 6 months to determine if excessive pump run times, on-off cycles, or abnormal flow conditions are occurring. A summary report stating the station is operating normally or abnormally shall be provided to MOORE twice a year. A similar evaluation shall also be made after major repairs or replacements of pumps at each lift station. Cost associated with this work, is the responsibility of VWNA.

- 2.3.8 VWNA shall exercise generators on a weekly basis under load conditions to assure proper operation when needed for emergencies.
- 2.3.9 VWNA shall set up a program that identifies which lines are repetitive problem areas, such as sag lines, and provide appropriate cleaning as necessary. This information shall be entered and maintained in the GIS system.
- 2.3.10 VWNA shall actively pursue operations that reduce the generation of odors in collection system, lift stations and wastewater treatment plants.
- 2.3.11 VWNA shall provide technical and other operational wastewater system information (non-engineering) for operations, grant, loan and bond application preparation efforts of MOORE.
- 2.3.12 VWNA shall prepare correspondence for submission to federal, state and local regulatory agencies in response to sanitary sewer overflows and any other inquiries about the system.
- 2.3.13 VWNA shall develop and maintain a crew for emergency operations and minor repairs of all aspects of the Wastewater Collection System, and shall be available twenty-four hours/seven days a week.

2.4 Wastewater Treatment

- 2.4.1 VWNA shall operate, maintain, and make repairs to MOORE's wastewater treatment facilities and all equipment necessary to produce treated wastewater effluent that meets or exceeds all federal, state, and local laws regulating the quality of discharged effluent for reuse or discharge to permitted receiving waters.
- 2.4.2 As provided in Section 10.4 of the Agreement, penalty and liquidated damages for failure to meet OPDES permit requirements shall be paid by VWNA.

2.4.3 VWNA shall be responsible for reporting in writing to MOORE and through the annual budget process, any and all major maintenance and capital improvements needed to provide a wastewater treatment system.

2.4.4 VWNA shall provide labor and equipment for the collection, hauling, testing, storage, and disposal of wastewater bio-solids at a landfill and MOORE shall retain the contract directly with any approved disposal sites and the cost of treatment and transportation thereto shall be VWNA' sole cost and expense and the cost of disposal shall be MOORE's sole cost and expense. VWNA shall track and manage disposal activities for MOORE per EPA 503 and MOORE's OPDES permit, including sludge, metals, and nitrogen loading rates and total tons disposed. All manifests required for disposal of waste shall be signed by or in the name of MOORE.

2.4.5 VWNA shall develop and maintain a crew for emergency operations and repairs of the Wastewater Treatment System twenty-four hours/seven days a week.

2.5 SCADA

2.5.1 SCADA system is provided as a tool by MOORE to assist VWNA in operating the facilities. However, the SCADA system may be periodically down for service, power outages, faulty instruments, and faulty communication

2.5.2 VWNA may implement new programming, hardware, and communication to the SCADA system to assist in operation of facilities, with approval from MOORE. Such changes shall be made at VWNA's cost. All additional SCADA devices shall be programmed in the same protocol as MOORE's existing SCADA system. Complete documentation and the latest program shall be updated and kept on file. MOORE will pay for SCADA upgrades to accommodate new systems and facilities.

2.5.3 VWNA shall provide personnel with experience and knowledge to provide normal maintenance and troubleshooting of the SCADA system, hardware and software.

2.6 **Emergencies.** Emergencies within VWNA's capabilities should be resolved in a timely manner. In any emergency affecting the safety of persons or property, VWNA shall act without written approvals, at VWNA's discretion, to prevent threatened damage, injury or loss of life.

2.7 **Laboratory Testing.** VWNA shall provide laboratory testing and sampling required for plant performance and for water quality portions of all local, state and federal permits, rules and regulations, statutes or ordinances, permit or license

requirements or judicial and regulatory orders and decrees. MOORE shall pay for said tests. Additional testing and sampling specially requested by MOORE or other regulatory entities shall be coordinated with VWNA, and costs shall be paid by MOORE. MOORE may periodically choose to require independent confirmation analyses of drinking water and wastewater effluent to be performed by an independent laboratory for quality control of in-house and VWNA contracted test results, at its own expense.

2.8 Hazardous Waste. Any hazardous waste generated by VWNA, such as used oil, UV Lamps, etc., in any of its activities shall be disposed of by VWNA, in accordance with applicable federal and state laws.

2.9 Reporting Requirements. VWNA shall provide MOORE with reports describing certain information on a periodic basis that will assist MOORE and VWNA in managing the utilities. The reports shall inform MOORE's Governing Body and the general public. Reporting requirements are subject to change as needed for providing information of the utilities system operations, historical data for future needs, and capital project planning. All reports shall be in summary format with detailed quantitative and financial information, available upon request by MOORE. Examples of required monthly reports are listed below. The listing is not inclusive and shall be changed as needed with concurrence by MOORE and VWNA.

Water Service

1. Number of active and inactive wells.
2. Number of gallons of water produced.
3. Number of gallons of storage.
4. Chemical usage.
5. Bacteriological testing results.
6. Training hours: safety, operations, equipment, and software.
7. Names of the actual personnel trained and hours attended.
8. Line repairs performed.
9. Fire hydrant flushing completed.
10. Customer inquiries.
11. Maintenance report: corrective and preventive maintenance.
12. Number of personnel hours: regular, overtime, compensatory time, on-call responses, and emergencies.
13. Current and planned project status.

Wastewater Service

1. Number of active and inactive lift stations.
2. Number of gallons of wastewater treated by plant.
3. Chemical usage.
4. Laboratory analysis results, summary.
5. Training hours: safety, operations, equipment, and software.
6. Names of the actual personnel trained and hours attended.
7. Sanitary sewer overflows.

8. Customer inquiries.
9. Maintenance Report: corrective and preventive maintenance.
10. Current and planned project status.

2.10 **Customer Service.** Customer Requests for Meter Readings; duties include, but are not limited to the following:

1. New Service Contracts.
2. Transfer of Service Contracts.
3. Final Service Contracts.
4. Billing requests for Re-reads.
5. Contracts for Temporary Service.
6. Daily Cut-Offs for Non-Payment.
7. Perform all reconnects after payments received up to 9:00 P.M. daily.

Administrative Duties include, but are not limited to the following:

1. Answer a minimum of four (4) phone lines.
2. Initiate and distribute work orders from Customer Service for utility departments.
3. Distribute and assist Customer Service with work orders and questions.
4. Handle distribution of reconnects for reinstatement of services.
5. Fire Hydrant Meter Distribution, Inventory and Monthly Readings.

2.11 **Meter Reading.** VWNA shall read customer water meters monthly. MOORE has approximately 28,000 residential water meters and 272 commercial water meters in sizes as shown below. These numbers grow each year.

<u>Commercial</u>	<u>Residential</u>	<u>Size</u>
202	-	1"
22	-	1.5"
43	-	2"
4	-	3"
1	-	4"
-	28,000	5/8"

2.12 **Other Maintenance.** Requests for Service include the following:

1. Reread and check meter upon request.
2. Check leak at the meter.
3. Emergency Turn Off.
4. Turn off for repairs.
5. Low water pressure.
6. No water.
7. Meter valve replacement.
8. Pull and Plug per Customer Service or Code Enforcement.

9. Line Locates for Water/Sewer.
10. Crew shall be On Call 24 hours per day and 7 days per week.
11. Water Main Leak/Breaks.
12. Yard Repairs including Sod.
13. Relocation of Meters.
14. All Meter Sets for New Construction (Commercial and Residential).
15. Fire Hydrant Repairs and Replacements.
16. Main Line Valve Replacements.
17. Concrete Re-pours (Sidewalks-Curbs).
18. All Sanitary Sewer Calls (From Customers and Plumbers).
19. Manhole Repairs.
20. Point Repairs on Sewer Mains.
21. Customer Assistance Program for Sanitary Sewer Backups 24 hours per day and 7 days per week.

2.13 Industrial Pretreatment Program (IPP). VWNA shall be responsible for compliance with the requirements of the ODEQ approved Industrial Pretreatment Program and sanitary sewer use ordinance enforcement for MOORE. Responsibilities include the following:

1. Conduct quarterly sampling of permitted industrial dischargers to the Collection System.
2. Maintain self-reporting files of permitted industrial dischargers to the Collection System
3. Conduct IPP inspections.
4. Conduct the Fats, Oil and Grease (FOG) Program and restaurant inspections.

2.14 Capacity Management Operations and Maintenance (CMOM) Program. VWNA shall implement Capacity Management Operations and Maintenance (CMOM) program in accordance with ODEQ requirements and shall be in accordance with the approved CMOM.

2.15 Federally Funded Projects. On federally funded projects VWNA must comply with all applicable federal requirements including but not limited to: Civil Rights, Affirmative Action, Employment Restrictions, Conduct, Lobbying, Copyrights, Religious Activities, Housing and Community Development (HCD) Act of 1974, and all applicable Office of Management and Budget (OMB) Circulars.

APPENDIX C

NPDES PERMIT AND
WASTEWATER TREATMENT CHARACTERISTICS

- C.1 VWNA will operate so that effluent will meet the requirement of OPDES Permit No. Permit #OK0027391 issued September 1, 2013), and all future permits (within the design capabilities of the plants) as they become effective, a full and complete copy of which is adopted by reference herein as of the date hereof. MOORE and VWNA will negotiate in good faith, the change in the Annual Fee necessary to permit VWNA to comply with future changes in permit conditions within the design capabilities of the plants. VWNA shall be responsible for meeting the effluent quality requirements of the Permit unless one or more of the following occurs: (1) the wastewater influent does not contain Adequate Nutrients to support operation of Project biological processes and/or contains Biologically Toxic Substances which cannot be removed by the existing process and facilities; (2) dischargers into MOORE's sewer system violate any or all regulations as stated in MOORE's Industrial Water and Sewer Ordinance(s) or as required by law; (3) the flow or influent CBOD₅ and/or suspended solids exceeds the Project design parameters which are 9 million gallons of flow per day, 200 mg/l of CBOD₅ per day monthly average, and 200 mg/l per day monthly average of suspended solids; (4) if the wastewater treatment facility and/or associated appurtenances is inoperable or can operate only at a reduced capacity on account of construction activities, fire, flood, adverse weather conditions, labor disputes or other causes beyond VWNA' control.
- C.2 In the event any one of the Project influent characteristics, suspended solids, CBOD₅ or flow, exceeds the design parameters stated above, VWNA shall return the plant effluent to the characteristics required by NPDES in accordance with the following schedule after Project influent characteristics return to within design parameters.

<u>Characteristics Exceeding Design Parameters By</u>	<u>Recovery Period Maximum</u>
10% or Less	5 days
Above 10% Less than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then VWNA will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

- C.3 VWNA shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances or is inoperable, and the subsequent recovery period.

C.4 The Annual Fee for services under this Agreement is based upon the following:

Project influent characteristics:

Flow 9 mgd
CBOD₅ 200 mg/l per day monthly average
TSS 200 mg/l per day monthly average

Any increase in any of these characteristics will constitute a Change in Scope (See Article 11).

APPENDIX D

INSURANCE COVERAGE

VWNA SHALL MAINTAIN:

1. Statutory workers compensation and employers liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease-each employee and \$1,000,000 disease-policy limit for all of VWNA' employees at the Project as required by the State of Oklahoma.
2. Commercial general liability insurance in an amount of \$5,000,000 per occurrence combined single limits for bodily injury and/or property damage. MOORE will be added as an additional insured with respect to VWNA's duties and activities under the scope of this Agreement.

MOORE SHALL MAINTAIN:

1. Statutory workers compensation and employers liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease-each employee, and \$1,000,000 disease-policy limit for all of MOORE's employees associated with the Project as required by the State of Oklahoma.
2. Property damage insurance for all property including collision and comprehensive coverage for all vehicles owned by MOORE and operated by VWNA under this Agreement. Any property, including vehicles, not properly or fully insured shall be the financial responsibility of MOORE. MOORE's property damage insurance shall contain a waiver of subrogation in favor of VWNA. MOORE reserves the right to self-insure.
3. Automobile liability insurance covering bodily injury and property damage resulting from all owned, non-owned vehicles used by MOORE with limits of \$1,000,000 combined single limit. VWNA will be named as an additional insured with respect to MOORE's duties and activities under the scope of this Agreement. MOORE reserves the right to self-insure.

Each party shall, within thirty (30) days after receipt of notice of cancellation of the insurance policies referenced above from the applicable insurers, the respective party or its designee will send a copy of such notice to the certificate holder of the certificate. Such notice is not a right or obligation within the policies, it does not alter or amend any coverage, it will not extend any policy cancellation date and it will not negate any cancellation of the policy. Failure to provide a copy of such notice to the certificate holder shall impose no obligation or liability of any kind upon the insurer or its agents or representatives. VWNA may self-insure to the extent permitted by law. With

respect to workers compensation and employers liability coverage, each policy shall provide a waiver of subrogation in favor of the other party.

APPENDIX E

FEDERAL CONTRACT PROVISION

Federal Contract Provision

Audits & Inspections

All contractors records with respect to any matters covered by this agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the contractors within 30 days after receipt by the contractors. Failure of the contractors to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The contractor hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning contractors' audits and OMB Circular A-133.

SANCTIONS AND PANELITIES

A. Lobbying

31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20 (over \$100,000)

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 160, et seq.] – Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City of Moore Department of Capital Planning and Resiliency.

B. Religious Activities

The contractors agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

C. Assignability

The contractors shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the contractors from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

D. Hatch Act

The contractors agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

E. Liability and Property Damage Insurance

The contractor assumes all risks incident to or in connection with its purpose to be conducted herein under and shall indemnify, defend and save the City of Moore harmless from damage or injuries of whatever nature or kind to persons or property arising directly or indirectly out of the Contractor's operations and arising from acts or omissions of its employees and shall indemnify, defend, save harmless the City of Moore from any penalties for violation of any law, ordinance or regulation affecting or having application to said operation or resulting from the carelessness, negligence or improper conduct of Contractor or any of its agents or employees.

In this connection, the Contractor shall carry Workmen's Compensation in accordance with State laws and Employer's Liability Insurance in the following amount:

1. Property Damage Liability - Limits shall be carried in the amount of twenty-five thousand dollars (\$25,000) to any one person for any number of claims for damage to or destruction of property, including but not limited to consequential damages, arising out of a single accident or occurrence.
2. All Other Liability - In the amount of one hundred thousand dollars (\$100,000) for claims including accidental death, personal injury, and all other claims to any one person out of a single accident or occurrence.
3. Dollars (\$1,000,000) for any number of claims arising out of a single occurrence or accident.

The insurance policies shall be issued by a reputable company. The City of Moore shall be furnished with a certificate of insurance, which shall provide that such insurance shall not be changed or canceled, without ten days prior written notice to the City of Moore. Certificates of Insurance shall be delivered to the City of Moore prior to the commencement of the agreement. THE POLICY SHALL CONTAIN AN ADDITIONAL INSURED ENDORSEMENT.

F. Bonding Requirements

For all jobs and projects funded with Federal funds, but only for such Federal jobs and projects, bonds shall be submitted to the City of Moore.

1. **Maintenance Bond:**

A good and sufficient Maintenance Bond shall be required in an amount equal to one hundred (100) percent of the total amount of the contract, guaranteeing such improvements against defective workmanship and/or materials for a period of one (1) year from and after the time of completion and acceptance by the City of said improvements.

2. **Performance Bond:**

A good and sufficient Performance Bond shall be required in an amount equal to one hundred (100) percent of the total contract amount guaranteeing execution and completion of the work in accordance with the specifications.

3. **Statutory Bond:**

A good and sufficient Statutory Bond shall be required in an amount equal to one hundred (100) percent of the total contact amount guaranteeing payment in full for all materials and labor used in the construction of the work.

G. Breaches and Dispute Resolution

49 CFR Part 18

1. **Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City of Moore Department of Capital Planning and Resiliency's Administrator or designee. This decision shall be final and conclusive unless within [ten (10)] calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Administrator or designee. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Administrator or designee shall be binding upon the Contractor and the Contractor shall abide by the decision.
2. **Performance During Dispute** - Unless otherwise directed by to the City of Moore Department of Capital Planning and Resiliency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
3. **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

4. **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Moore Department of Capital Planning and Resiliency and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration in the City of Moore Department of Capital Planning and Resiliency if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Moore Department of Capital Planning and Resiliency is located.
5. **Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Moore Department of Capital Planning and Resiliency, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**TERMINATION AND DEBARMENT
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED
ACTS**

31 U.S.C. 3801 et seq., 49 CFR Part 31 18 U.S.C. 1001, 49 U.S.C. 5307

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal Assurances originally awarded by HUD, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal Assurances provided by HUD. It is further agreed that the

clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29, Executive Order 12549 (over \$25,000)

Instructions for Certification

By Signing and submitting this bid, the prospective lower tier participant is providing the signed certification set out below:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the City of Moore Department of Capital Planning and Resiliency may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the City of Moore Department of Capital Planning and Resiliency if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "Contractor," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the City of Moore Department of Capital Planning and Resiliency for Assurances in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the City of Moore Department of Capital Planning and Resiliency.
5. The prospective lower tier participant further agrees by submitting this bid that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it

determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.

7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the City of Moore Department of Capital Planning and Resiliency may pursue available remedies including suspension and/or debarment.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”

- A. The prospective lower tier participant certifies, by submission of this bid, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- B. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid.

EQUAL OPPORTUNITIES

Executive Order 11246 September 24, 1965 as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations 41 CFR chapter 60

The following equal employment opportunity requirements apply to the underlying contract:

- (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be

limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.

- (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.
- (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.

A. Civil Rights

29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.

- (1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements HUD may issue.

The contractors agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

The contractors agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

- (2) Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the contractors shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The contractors, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

(3) Section 504

The contractors agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the contractors with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

- (4) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal Assurances provided by HUD, modified only if necessary to identify the affected parties.

AFFIRMATIVE ACTION

A. Approved Plan

The contractors agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the contractors to assist in the formulation of such program.

B. Women and Minority Owned Businesses

The contractors will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The contractors may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

C. Notifications

The contractors will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractors commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. Subcontract Provisions

The contractors will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own contractors or subcontractors.

COPELAND "ANTI-KICKBACK"

40 U.S.C. § 276c (1999), 29 C.F.R. § 3 (1999), 29 C.F.R. § 5 (1999)

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract, specifically Davis Bacon Act.

DAVIS-BACON ACT

40 U.S.C. & 167; 27a-276a-5 (1998), 29 CFR § 5 (1999)

A. Minimum wages

- i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the **Copeland Act** (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics

performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii. (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears as reasonable relationship to the wage rates in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of

receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- iii. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- iv. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- v. (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so

advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- B. **Withholding** – the City of Moore Department of Capital Planning and Resiliency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [insert name of grantee] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- C. **Payrolls and basic records**
- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of

Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of Moore Department of Capital Planning and Resiliency for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for

submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and trainees

- (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the

applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- (5) **Compliance with Copeland Act requirements** – The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
 - (6) **Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
 - (7) **Contract termination: debarment** – A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
 - (8) **Compliance with Davis-Bacon and Related Act requirements** – All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
 - (9) **Disputes concerning labor standards** – Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
 - (10) **Certification of eligibility** – (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- E. **General Wage Decision Number OK150029** – MOORE and VVNA agree that this contract shall be governed by the General Wage Decision Number: OK150029 attached hereto in Exhibit G and incorporated by reference herein.

CONTRACT WORK HOURS AND SAFETY STANDARDS

40 U.S.C. §§ 327 -333 (1999), 29 C.F.R. § 5 (1999), 29 C.F.R. § 1926 (1998)

- A. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- B. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- C. **Withholding for unpaid wages and liquidated damages** - the City of Moore Department of Capital Planning and Resiliency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- E. **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors

employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

F. Contract Work Hours and Safety Standards Act

- (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

- (ii) Subcontracts - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials, which will become an integral part of the construction, is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

REPORTS AND RECORDS

49 U.S.C. 5325, 18 CFR 18.36 (i), 49 CFR 633.17

The Contractor agrees to maintain all books, records, accounts, and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City of Moore Department of Capital Planning and Resiliency, the HUD Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The contractors shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and

accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

Federal Changes 49 CFR Part 18

Contractor shall at all times comply with all applicable HUD regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form HUD MA (6) dated October, 1999) between the City of Moore Department of Capital Planning and Resiliency and HUD, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

DISCOVERY, COPYRIGHTS, AND DATA RIGHTS 24 CFR Subtitle A. 85.34 Copyrights

The City of Moore Department of Capital Planning and Resiliency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

1. The copyright in any work developed under the contract: and
2. Any rights of copyright to which a Contractor, Sub-contractor or a Contractor purchases ownership with grant support.

ACCESS TO RECORDS AND REPORTS 49 U.S.C. 5325, 18 CFR 18.36 (i), 49 CFR 633.17

The Contractor agrees to **maintain all books, records, accounts and reports** required under this contract for a period of not less than **three years** after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City of Moore Department of Capital Planning and Resiliency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

CLEAN AIR ACT-CLEAN WATER ACT-ENERGY POLICY AND CONSERVATION ACT

A. Clean Air 42 U.S.C. 7401 et seq., 40 CFR 15.61, 49 CFR Part 18 (over \$100,000)

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees

that the Purchaser will, in turn, report each violation as required to assure notification and the appropriate EPA Regional Office.

- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assurances provided by HUD.

B. Clean Water

33 U.S.C. 1251 (over \$100,000)

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the City of Moore Department of Capital Planning and Resiliency and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notifications the appropriate EPA Regional Office.

- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with HUD.

ENERGY CONSERVATION, RECYCLED PRODUCTS, AND SEISMIC SAFETY

A. Energy Conservation

42 U.S.C. 6321 et. Seq., 49 CFR Part 18

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

B. Recycled Products

42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873 (More than \$10,000)

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

APPENDIX F

FORMULA FOR ADJUSTED ANNUAL FEE

Annual Adjustment:

Beginning January 1, 2017, until the expiration or earlier termination of this Agreement, the Annual Fee shall be adjusted annually, such adjustment becoming effective on the anniversary date of the Commencement Date of the initial term of the Agreement, according to the change in the Escalation Factor. The Escalation Factor is comprised of the following:

(a) 41.0% of the year-to-year change in the Consumer Price Index, All Urban Consumers ("CPI-U"), as published by the United States Department of Labor, Bureau of Labor Statistics Not Seasonally Adjusted, US City Average, All Items, Series ID: CUUR0000SA0;

plus

(b) 53.4% of the year-to-year change in the Employment Cost Index ("ECI") as published by the United States Department of Labor, Bureau of Labor Statistics Not Seasonally Adjusted table 4, Compensation-Civilian-Workers-Service Occupations, Series ID: CIU1010000300000I;

plus

(c) 5.6% of the year-to-year change in the Producer Price Index ("PPI") as published by the United States Department of Labor, Bureau of Labor Statistics Not Seasonally Adjusted, Chemicals and Allied Products- Series ID: WPU06.

For purposes of this Agreement, the indices applicable to calculation of the Escalation Factor shall be the indices published in June of the prior year for the CPI-U and PPI and the index published in the 2nd quarter of the prior year for the ECI.

Whereas:

A= Blended Escalation Adjustment Factor

B = CPI-U Escalation Adjustment Factor

C = ECI Escalation Adjustment Factor

D = PPI Escalation Adjustment Factor

B1 = Previous Year CPU-I Index (June of the year immediately preceding the prior year)

B2 = Just Ended Year CPI-U Index (June of the prior year)

C1 = Previous Year ECI Index (Qtr 2 of the year immediately preceding the prior year)

C2 = Just Ended Year ECI Index (Qtr 2 of the prior year)

D1 = Previous Year PPI Index (June of the year immediately preceding the prior year)

D2 = Just Ended Year PPI Index (June of the prior year)

Calculation:

$$B = (B2-B1)/B1 \times .410$$

$$C = (C2-C1)/C1 \times .534$$

$$D = (D2-D1)/D1 \times .056$$

$$A = 1 + (B+C+D)$$

$$\text{Adjusted Annual Fee} = \text{Previous Annual Fee} \times A$$

Example:

$$B = (110-107)/107 \times .41 = .011495$$

$$C = (110-107)/107 \times .534 = .014972$$

$$D = (110-107)/107 \times .056 = .00157$$

$$A = 1 + .011495 + .014972 + .00157$$

$$A = 1.028037$$

$$\text{Adjusted Annual Fee} = \$300,000 \times 1.028037 = \$308,411.$$

Exhibit G

General Decision Number: OK150029

General Decision Number: OK150029 06/12/2015 OK29

Superseded General Decision Number: OK20140029

State: Oklahoma

Construction Type: Heavy

Counties: Canadian, Cleveland, Grady, Lincoln and McClain Counties in Oklahoma.

HEAVY CONSTRUCTION PROJECTS (including sewer/water line construction; heavy construction projects on treatment plants and industrial sites) (excludes heavy dredging and water well drilling)

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015
1	06/12/2015

* ENGI0627-015 06/01/2015

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
Group 1.....	\$ 28.05	11.83
Group 2.....	\$ 26.35	11.83
Group 3.....	\$ 25.80	11.83
Group 4.....	\$ 25.05	11.83
Group 5.....	\$ 24.55	11.83
Group 6.....	\$ 24.10	11.83
Group10.....	\$ 21.10	11.83

POWER EQUIPMENT OPERATOR

GROUP 1: All Crane Type Equipment 200 ton and larger and including 400 ton capacity cranes.
All Tower Cranes.

GROUP 2: All Crane Type Equipment 100 ton capacity and larger cranes, and less than 200 ton capacity.

GROUP 3: All Crane Type Equipment 50 ton capacity and larger cranes, and less than 100 ton capacity. Crane Equipment (as rated by mfg.) 3 cu. yd. and over Guy derrick Whirley Power Driven Hole Digger (with 30' and longer mast).

GROUP 4: CRANES with Boom Incl. Jib less than 100 ft and less than 3 cu. Yd.; Overhead Monorail Crane

GROUP 5: BULLDOZER

GROUP 6: ROLLER (ASPHALT AND DIRT)

GROUP 10: OILER

IRON0048-005 06/01/2013

	Rates	Fringes
IRONWORKER (Structural, Reinforcing, and Ornamental).....	\$ 23.10	12.88

SUOK2012-007 05/18/2012

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 12.49	1.23
ELECTRICIAN.....	\$ 22.00	4.76
FORM WORKER.....	\$ 11.77	0.00
LABORER: Common or General.....	\$ 11.81	1.09
LABORER: Pipelayer.....	\$ 11.13	0.00
OPERATOR: Backhoe/Excavator.....	\$ 18.17	6.28
OPERATOR: Drill.....	\$ 17.15	0.78
OPERATOR: Grader/Blade.....	\$ 17.76	3.87
OPERATOR: Loader (Front End)....	\$ 13.51	0.00
OPERATOR: Mechanic.....	\$ 19.61	9.39
OPERATOR: Scraper.....	\$ 16.00	1.55
OPERATOR: Trackhoe.....	\$ 17.50	2.78
TRUCK DRIVER: Dump Truck.....	\$ 16.50	0.74

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union

data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION