

Revised: 01/01/04

OKLAHOMA FUNDING AGENCY COORDINATING TEAM

AGREEMENT

FOR

ENGINEERING SERVICES

ENDORSED BY:

**OKLAHOMA WATER RESOURCES BOARD STAFF
OKLAHOMA DEPARTMENT OF COMMERCE
OKLAHOMA CITY AREA INDIAN HEALTH SERVICE
USDA - RURAL DEVELOPMENT - OKLAHOMA
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY**

REVISED: January 1, 2004

OKLAHOMA FUNDING AGENCY COORDINATING TEAM AGREEMENT FOR ENGINEERING SERVICES

This Agreement, made this _____ day of _____, _____

by and between _____, hereafter referred to as the OWNER,

and _____, hereinafter referred to as the ENGINEER:

THE OWNER intends to construct a _____

_____ in _____ County, State of Oklahoma, which may be paid for in part with financial assistance from one or more funding Agencies both federal and/or state and for which the ENGINEER agrees to perform the various professional engineering services for the design and construction of said system. By definition FUNDING AGENCY may refer to one or more Agencies involved in funding the proposed project.

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SECTION A - ENGINEERING SERVICES

The ENGINEER shall furnish engineering services as follows:

1. The ENGINEER will conduct preliminary investigations, prepare preliminary drawings, provide a preliminary itemized list of probable construction costs effective as of the date of the report, and submit an engineering report following funding Agency instructions and guides.
2. The ENGINEER will furnish 10 copies of the engineering report, and layout maps to the OWNER.
3. The ENGINEER will attend conferences with the OWNER, representatives of the funding Agency, or other interested parties as may be reasonably necessary.
4. After the engineering report has been reviewed and approved by the OWNER, the funding agency, and by the Department of Environmental Quality and the OWNER directs the ENGINEER to proceed, the ENGINEER will perform the necessary design surveys, accomplish the detailed design of the project, prepare construction drawings, specifications and contract documents, and prepare a final cost estimate based on the final design for the entire system. It is also understood that if subsurface explorations (such as borings, soil tests, rock soundings and the like) are required, the ENGINEER will furnish coordination of said explorations without additional charge, but the costs incident to such explorations shall be paid for by the OWNER as set out in Section D hereof.
5. The contract documents furnished by the ENGINEER under Section A-4 shall utilize funding Agency endorsed construction contract documents, including funding Agency General Conditions, Contract Change Orders, and partial payment estimates. All of these documents shall be subject to funding Agency approval. Copies of guide contract documents may be obtained from the funding Agency.
6. Prior to the advertisement for bids, the ENGINEER will provide for each construction contract, not to exceed 10 copies of detailed drawings, specifications, and contract documents for use by the OWNER, appropriate Federal, State, and local agencies from whom approval of the project must be obtained. The cost of such drawings, specifications, and contract documents shall be included in the basic compensation paid to the ENGINEER.
7. The ENGINEER will furnish additional copies of the drawings, specifications and contract documents as required by prospective bidders, material suppliers, and other interested parties, but may charge them for the reasonable cost of such copies. Upon award of each contract, the ENGINEER will furnish to the OWNER five sets of the drawings, specifications and contract documents for execution. The cost of these sets shall be included in the basic compensation paid to the ENGINEER. Original documents, survey notes, tracings, and the like, except those furnished to the ENGINEER by the OWNER, are and shall remain the property of the ENGINEER.

8. The drawings prepared by the ENGINEER under the provisions of Section A-4 above shall be in sufficient detail to permit the actual location of the proposed improvements on the ground. The ENGINEER shall prepare and furnish to the OWNER without any additional compensation, three copies of a map(s) showing the general location of needed construction easements and permanent easements and the land to be acquired. Property surveys, property plats, property descriptions, abstracting and negotiations for land rights shall be accomplished by the OWNER, unless the OWNER requests, and the ENGINEER agrees to provide those services. In the event the ENGINEER is requested to provide such services, the ENGINEER shall be additionally compensated as set out in Section D hereof.

9. The ENGINEER will attend the bid opening and tabulate the bid proposals, make an analysis of the bids, and make recommendations for awarding contracts for construction.

10. The ENGINEER will review and approve, for conformance with the design concept, any necessary shop and working drawings furnished by contractors.

11. The ENGINEER will interpret the intent of the drawings and specifications to protect the OWNER against defects and deficiencies in construction on the part of the contractors. The ENGINEER will not, however, guarantee the performance by any contractor.

12. The ENGINEER will establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work as shown in the contract documents.

13. The ENGINEER will provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractor is conforming with the design concept.

14. Unless notified by the OWNER in writing that the OWNER will provide for resident inspection, the ENGINEER will provide resident construction inspection. The ENGINEER'S undertaking hereunder shall not relieve the contractor of contractor's obligation to perform the work in conformity with the drawings and specifications and in a workmanlike manner; shall not make the ENGINEER an insurer of the contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner.

15. The ENGINEER will cooperate and work closely with funding Agency representatives.

16. The ENGINEER will review the contractor's applications for progress and final payment and, when approved, submit same to the OWNER for payment.

17. The ENGINEER will prepare necessary contract change orders for approval of the OWNER, the funding Agency, and others on a timely basis.

18. The ENGINEER will make a final review prior to the issuance of the statement of substantial completion of all construction and submit a written report to the OWNER and the funding Agency. Prior to submitting the final pay estimate, the ENGINEER shall submit a statement of completion to and obtain the written acceptance of the facility from the OWNER and the funding Agency.

19. The ENGINEER will provide the OWNER with one set of reproducible record (as-built) drawings, and two sets of prints at no additional cost to the OWNER. Such drawings will be based upon construction records provided by the contractor during construction and reviewed by the resident inspector and from the resident inspector's construction data.

20. If State statutes require notices and advertisements of final payment, the ENGINEER shall assist in their preparation.

21. The ENGINEER will be available to furnish engineering services and consultations necessary to correct unforeseen project operation difficulties for a period of one year after the date of statement of substantial completion of the facility. This service will include instruction of the OWNER in initial project operation and maintenance but will not include supervision of normal operation of the system. Such consultation and advice shall be furnished without additional charge except for travel and subsistence costs. The ENGINEER will assist the OWNER in performing a review of the project during the 11th month after the date of the certificate of substantial completion.

22. The ENGINEER further agrees to obtain and maintain, at the ENGINEER'S expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may

arise from the performance by the ENGINEER or by the ENGINEER'S employees of the ENGINEER'S functions and services required under this Agreement.

23. The services called for in the Section A-1 and A-2 of this Agreement shall be completed and the report submitted within _____ calendar days from the date of authorization to proceed. After acceptance by the OWNER and the funding Agency of the Engineering Report and upon written authorization from the OWNER, the ENGINEER will complete final plans, specifications and contract documents and submit for approval of the OWNER, the funding Agency and all State regulatory agencies within _____ calendar days from the date of authorization unless otherwise agreed to by both parties.

If the above is not accomplished within the time period specified, this Agreement may be terminated by the OWNER. The time for completion will be extended by the OWNER for a reasonable time if completion is delayed due to unforeseeable causes beyond the control and without the fault or negligence of the ENGINEER.

SECTION B - COMPENSATION FOR ENGINEERING SERVICES

1. The OWNER shall compensate the ENGINEER for preliminary engineering services in the sum of _____ Dollars (\$ _____) after the review and approval of the engineering report by the OWNER, the Department of Environmental Quality, and the funding Agency.

2. The OWNER shall compensate the ENGINEER for design and contract administration engineering services in the amount of: (Select (a) or (b))

(a) _____ Dollars (\$ _____)

or

(b) As shown in Attachment 1

3. When Attachment 1 is used to establish compensation for the design and contract administration services, the actual construction costs on which compensation is determined shall exclude legal fees, administrative costs, engineering and environmental fees, land rights, acquisition costs, water costs, interest expense, and other such costs not directly related to actual construction incurred during the construction period.

The compensation for preliminary engineering services, design and contract administration services shall be payable as follows:

(a) A sum which equals seventy percent (70%) of the total compensation payable under Section B-1 and 2, after completion and submission of the construction drawings, specifications, cost estimates, and contract documents, and the acceptance of the same by OWNER, the Department of Environmental Quality, and the funding Agency.

(b) A sum which, together with the compensation provided in Section B-3-(a) above, equals eighty percent (80%) of the compensation payable immediately after the construction contracts are awarded.

(c) A sum equal to fifteen percent (15 %) of the compensation will be paid on a monthly basis for general engineering review of the contractor's work during the construction period on percentage ratios identical to those approved by the ENGINEER as a basis upon which to make partial payments to the contractor(s). However, payment under this paragraph and of such additional sums as are due the ENGINEER by reason of any necessary adjustments in the payment computations will be in an amount so that the aggregate of all sums paid to the ENGINEER will equal ninety-five (95%) of the compensation. A final payment to equal 100 percent shall be made when it is determined that all services required by this Agreement have been completed except for the services set forth in Section A-21 hereof.

SECTION C - COMPENSATION FOR RESIDENT INSPECTION AS SET FORTH IN SECTION A- 14

When the ENGINEER provides resident inspection, the ENGINEER will, prior to the preconstruction conference, submit a resume of the resident inspector's qualifications, anticipated duties and responsibilities for approval by the OWNER and the funding Agency. The OWNER agrees to pay the ENGINEER for such services in accordance with the schedule set out in Attachment 1. The ENGINEER will render to OWNER for such services an itemized bill, once each month, for compensation for such services performed hereunder during such period, the same to be due and payable by the OWNER to the ENGINEER on or before the 10th day of the following period.

Under normal construction circumstances, and for the proposed construction period of _____ days, the cost of resident inspection is estimated to be \$ _____.

SECTION D - ADDITIONAL ENGINEERING SERVICES

In addition to the foregoing being performed, the following services may be provided UPON PRIOR WRITTEN AUTHORIZATION OF THE OWNER and written approval of the funding Agency.

1. Site surveys for water treatment plants, sewage treatment works, dams, reservoirs, and other similar special surveys as may be required.
2. Laboratory tests, well tests, borings, specialized geological, soils, hydraulic or other studies recommended by the ENGINEER.
3. Property surveys, detailed description of sites, maps, drawings, or estimates related thereto; assistance in negotiating for land and easement rights.
4. Necessary data and filing maps for water rights, water adjudication, and litigation.
5. Redesigns ordered by the OWNER after final plans have been accepted by the OWNER and the funding Agency, except redesigns to reduce the project cost to within the funds available.
6. Appearances before courts or boards on matters of litigation or hearings related to the project.
7. Performance of detailed staking necessary for construction of the project in excess of the control staking set forth in Section A-12.
8. The ENGINEER further agrees to provide the operation and maintenance manual for facilities when required for \$ _____.

Payment for the services specified in this Section D shall be as agreed in writing between the OWNER and approved by the funding Agency prior to commencement of the work. Barring unforeseen circumstances, such payment is estimated not to exceed \$ _____.

The ENGINEER will render to OWNER for such services an itemized bill, separate from any other billing, once each month, for compensation for services performed hereunder during such period, the same to be due and payable by OWNER to the ENGINEER on or before the 10th day of the following period.

SECTION E - INTEREST ON UNPAID SUMS

If OWNER fails to make any payment due ENGINEER within 60 days for services and expenses and funds are available for the project then the ENGINEER shall be entitled to interest at the rate of _____ percent per annum from said 60th day, not to exceed an annual rate of 12 percent.

SECTION F - SPECIAL PROVISIONS

SECTION G - ENVIRONMENTAL INFORMATION DOCUMENT

CHECK ONE OF THE FOLLOWING:

- 1. The ENGINEER will not be responsible under this contract to prepare the Environmental Information Document (EID).
- 2. The ENGINEER will furnish the Environmental Information Document (EID) following the Funding Agency Coordinating Team Checklist and Guides which includes, but is not limited to the following scope of services:
 - a. Data Collection and Mapping.
 - b. Coordination with State and Federal Agencies by written notification.
 - c. Draft Environmental Information Document including alternative analysis.
 - d. Final Environmental Information Document. (Includes revisions to the EID as requested by the Funding Agency and/or the Oklahoma Department of Environmental Quality, but does not include revisions based upon alternative location and/or treatment technologies not evaluated as part of the original EID.)

Special Note: This scope of services does not include additional studies related to the completion of the EID. These studies would include but are not limited to:

- Wetland Delineation
- Archeological Inspections
- Hazardous Waste Studies
- Endangered Species and Critical Habitat Studies
- Sludge Management Plans

The compensation for preparing an acceptable Environmental Information Document will be accomplished by one of the following methods of compensation. Please check (A or B) one of the following methods:

A. ---- Lump Sum in an amount not to exceed _____ dollars (_____).
Due and payable upon acceptance by the owner and Funding Agency(s) and based upon availability of Agency funds. The owner will be billed upon the completion of the three following deliverables:

	<u>Amount</u>
<u>Deliverable 1:</u> Data Collection, Mapping, and Coordination with State and Federal Agencies	-----
<u>Deliverable 2:</u> Draft Environmental Information Document	-----
<u>Deliverable 3:</u> Final Environmental Information Document	-----
<u>Total:</u>	-----

B. ----- Hourly Rate

Due and payable upon acceptance by the owner and Funding Agency(s) and based upon availability of Agency funds. The owner will be billed upon completion of the three following deliverables:

<u>Deliverable 1:</u>	<u>Hourly Rate</u>	<u>Estimated Hours</u>	<u>Total</u>
Data Collection, Mapping, and Coordination with State and Federal Agencies	_____	_____	_____
<u>Deliverable 2:</u>			
Draft Environmental Information Document	_____	_____	_____
<u>Deliverable 3:</u>			
Final Environmental Information Document	_____	_____	_____
			<u>Total:</u> _____

SECTION H – EXECUTION OF AGREEMENT

This Agreement shall become effective once the two parties listed below, OWNER and ENGINEER, have signed with their signatures properly attested to:

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below:

(OWNER SEAL)

OWNER:

By _____

Type Name _____

Title _____

Date _____

ATTEST _____

Type Name _____

Title _____

(ENGINEER SEAL)

ENGINEER:

By _____

Type Name _____

Title _____

Date _____

ATTEST _____

Type Name _____

Title _____

When a funding agency is required to approve Engineering Agreements, this agreement will be provided to the agency after a commitment of financial assistance by the funding agency. Such approval shall be evidenced by the signature of a duly authorized representative of the funding agency in the space provided at the end of this Agreement. The approval shall signify that the provisions of this Agreement are consistent with the requirements of the funding agency.

APPROVAL:

APPROVAL: (If more than one funding Agency)

FUNDING AGENCY

FUNDING AGENCY

By _____

By _____

Type Name _____

Type Name _____

Title _____

Title _____

Date _____

Date _____

INTERIM AGREEMENT

(For use only when OWNER is not legally organized on the date the Agreement for Engineering Services is executed.)

In lieu of the execution of the foregoing Agreement for Engineering Services dated the _____ day of _____,

_____ , _____ , by the party designated as OWNER therein, the undersigned, hereinafter referred to as INTERIM PARTIES, have executed this Interim Agreement in consideration of the services described in Section A- 1 through A-3, inclusive, of said Agreement for Engineering Services to be performed by the ENGINEER, and the ENGINEER agrees to accept this Interim Agreement as evidenced by ENGINEER'S execution hereof contemporaneously with the execution of the Agreement for Engineering Services. The ENGINEER also agrees to perform the services set forth in Section A-1 through A-3, inclusive, of said Agreement in consideration of the sum stated in Section 13- 1 of said Agreement be paid in the manner set forth therein.

It is anticipated that the OWNER shall promptly become a legal entity with full authority to accept and execute said Agreement for Engineering Services and that the OWNER, after becoming so qualified, shall promptly take such action necessary to adopt, ratify, execute, and become bound by the Agreement for Engineering Services. The ENGINEER agrees that upon such due execution of the Agreement for Engineering Services by the OWNER, the INTERIM PARTIES automatically will be relieved of any responsibility or of liability assumed by their execution of this Interim Agreement, and that the ENGINEER will hold the OWNER solely responsible for performance of the terms and conditions imposed upon the OWNER by the Agreement for Engineering Services, including the payment of all sums specified in Section B- 1 of said Agreement.

If the OWNER is not legally organized, or if after being duly organized it fails or refuses to adopt, ratify, and execute the Agreement for Engineering Services within 30 days from the date it becomes legally organized and qualified to do so, or if for any other reason the project fails to proceed beyond the preliminary stage described in Section A- 1 through A-3 inclusive, of said Agreement, the INTERIM PARTIES agree to pay ENGINEER for such preliminary engineering services, an amount not to exceed the sum specified therefore in Section B- 1 of said Agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate this _____ day of _____, _____.

OWNER

ENGINEER

ATTACHMENT 1 - Agreement for Engineering Services Page 1

**RECOMMENDED ALLOWABLE FEES FOR PROFESSIONAL ENGINEERING SERVICES
(AS A PERCENTAGE OF TOTAL ACTUAL CONSTRUCTION COST)**

I. GENERAL

The engineering fees indicated below are the recommended allowable for funding agency financed projects in Oklahoma. These fees will be based upon the total actual construction cost only. Each system Owner is encouraged to negotiate the professional engineering fee in order to obtain the most equitable fee structure for each given project.

II. ENGINEERING FEES

The following table is the recommended allowable engineering fee for Funding Agency-financed projects. This fee includes preliminary engineering services in accordance with Funding Agency guides (Section B.1) and design and contract administration services (Section B.2) for the total engineering fee.

<u>Net Construction Cost of Entire Project</u>	<u>Percent Fee</u>
\$ 60,000	13.2
70,000	12.6
80,000	12.3
90,000	12.0
100,000	11.9
200,000	10.5
300,000	9.7
400,000	8.9
500,000	8.5
600,000	8.2
700,000	8.0
800,000	7.8
900,000	7.7
1,000,000	7.5
2,000,000	6.7
3,000,000	6.4
4,000,000	6.3
5,000,000	6.2
10,000,000	6.0

Oklahoma State Statute requires that a licensed engineer must design any facility that affects public health or safety. The Funding Agency requires that the licensed engineering firm make necessary inspections during the construction phase of the facility to see that it is constructed according to the approved plans and specifications. These fees are established for professional services.

ATTACHMENT 1 - Agreement For Engineering Services Page 2

III. RESIDENT INSPECTION FEE

<u>Net Construction Cost</u>	<u>Percent Fee</u>
\$100,000 or less	5.0 (or negotiated lump sum)
200,000	4.2
300,000	3.8
400,000	3.5
500,000	3.2
600,000	3.0
700,000	2.8
800,000	2.65
900,000	2.5
1,000,000	2.4
2,000,000	2.3
3,000,000	2.2
4,000,000	2.1
5,000,000	2.0
10,000,000	1.9

The fee for full-time resident inspection to be paid under this contract will be a percent of the cost of construction, as determined above unless one of the following is checked:

- 1. The fee for part-time resident inspection to be paid under the contract will be percent (_____.____%) of the total cost of construction. The percentage used for this method of inspection will be less than that shown above.
- 2. The fee for (full-time) (part-time) resident inspection to be paid under this contract will be a lump sum to be dispersed during construction on a periodic basis on percentage ratios identical to those approved by the Engineer as a basis upon which to make partial payments to the contractor(s). Precisely, the fee will be \$_____.
- 3. The fee for (full-time) (part-time) resident inspection to be paid under this contract will be at the rate of \$_____ per day which includes all travel and incidental expenses.

It is anticipated that on some jobs, such as where a storage tank is constructed, there may be little resident inspection needed. On projects involving pipeline installation, full-time resident inspection will be required.

The cost and type of resident inspection needed must be discussed by the applicant and consulting engineer and the fee established prior to the start of construction.

The engineer is not relieved of providing general engineering inspections by a qualified engineer when he is providing the full-time resident inspection.