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# MEMO

APPROVED  
05/26/2020



DATE: May 20, 2020  
FROM: Matney M. Ellis  
Procurement Director  
TO: Board of County Commissioners  
SUBJECT: Service Agreement – Enercon Services, Inc.

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Submitted for your approval and execution is the attached Service Agreement between the Board of County Commissioners on behalf of the Tulsa County Engineers and Enercon Services, Inc. for necessary Corrective Actions directed by Oklahoma Corporation Commission (OCC) for the Tulsa County facility located at 5625 South Garnett Road, Tulsa, Oklahoma 74146.

Respectfully submitted for your approval and execution.

MME / arh

SUBMITTED FOR: The May 26, 2020 BOCC meeting agenda.

CMF# 20201179

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**SERVICE AGREEMENT**

THIS AGREEMENT, made and entered into as of May 26, 2020  
(Date)

By And Between: Board of County Commissioners of the County of Tulsa, Oklahoma  
hereinafter referred to as Company

And: Enercon Services, Inc. an Oklahoma Corporation,  
hereinafter referred to as ENERCON

WHEREAS, ENERCON has substantial technical and engineering expertise, desired by Company; and

WHEREAS, ENERCON and Company desire to enter into this Agreement for the purpose of setting forth the general terms under which ENERCON will perform underground storage tank corrective action work and any projects which may be let to ENERCON by Company from time to time.

NOW, THEREFORE, in consideration of mutual promises and covenants herein set forth, the parties hereby agree as follows:

Section 1. Definition of Service

ENERCON will provide professional services pursuant to Oklahoma Corporation Commission (OCC) Petroleum Storage Tank Division Rules and Regulations to implement the necessary Corrective Actions as directed by the OCC for the Tulsa County facility, 5625 South Garnett Road, Tulsa, Oklahoma 74146 (OCC Facility ID# 72-05526, OCC Case # 064-4505).

ENERCON shall provide written notice of work proposed to be performed to Company. ENERCON shall propose such work to the OCC and shall obtain a purchase order or notice of intent to issue a purchase order before performing the work. The written notice shall include:

- a. A description of the specific services proposed.
- b. A schedule by which the services are to completed, if appropriate.
- c. A statement of the projected cost for services proposed.
- d. A statement of applicable specific requirements associated with services to be provided.

When the work specified in such notice is accepted by Company and the OCC, said work shall be done and performed in accordance with the terms of this Agreement. If there should be any conflict between the

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general terms of this Agreement and other terms of the written notice under which the project is let, then the general terms of this Agreement shall control in all instances except those wherein the notice under which said work is let specifically states that the terms contained in said notice shall be controlling in the event of a conflict between the terms of the notice and the terms of this Agreement.

## Section 2. Description of Work

Unless otherwise specified or agreed, the work to be executed under this Agreement shall consist of providing services as described in the written proposal to be done as agreed upon by ENERCON, Company, and the OCC. ENERCON shall organize and staff each assigned authorized task so as to fully respond to the request for service on a timely basis at the approved cost, consistent with the terms and conditions of this Agreement.

## Section 3. Standard Payment Terms and Conditions

Pursuant to the Company being determined eligible for reimbursement of corrective action costs, and the Company satisfying the statutorily required deductible, ENERCON agrees to accept OCC Indemnity Fund reimbursement as full payment for services rendered. ENERCON will request an OCC purchase order prior to implementing any activity under this Agreement, unless otherwise directed by Company. **The Company will be responsible for payment of the deductible to the OCC.** In the event that the OCC refuses to issue a purchase order for the proposed work, and Company continues to request that work, ENERCON will prepare a scope and cost proposal for those services, and will obtain written authority to proceed from Company before performing the work. In this circumstance, Company will be responsible for payment for said services to ENERCON within 30 days of the date of ENERCON's invoice. ENERCON and Company agree to cooperate if it becomes necessary to pursue legal remedies in gaining reimbursement from the OCC. Any OCC Indemnity Fund reimbursement proceeds in excess of the actual corrective action fees shall be reimbursed to Company.

## Section 4. Assignment of OCC Indemnity Fund Benefits

Company hereby directs and authorizes the OCC Indemnity Fund to remit all approved reimbursement proceeds from OCC Case # 064-4505 directly to ENERCON at the address shown on the currently appropriate Indemnity Fund forms.

ENERCON shall invoice Company and execute appropriate OCC Indemnity Fund claim forms on the schedule specified in the OCC Purchase Order.

## Section 5. Taxes

ENERCON assumes exclusive liability for all of its employee contributions pursuant to any and all federal and state revenue acts, federal and state unemployment compensation acts, social security acts, or any amendments thereto, and by other state or federal laws or regulations requiring the payment of similar

contributions or taxes.

#### Section 6. Term and Termination

This Agreement shall be effective as of the date specified herein and shall continue in effect thereafter, unless otherwise terminated. Company may terminate this Agreement for convenience or for the default of ENERCON upon thirty (30) days written notice to ENERCON. Upon receipt of such notice, ENERCON shall discontinue work on the current purchase order(s) as promptly as is reasonable, and shall attempt to minimize charges to Company under the Agreement. ENERCON shall submit to Company a written report of findings up to the date of termination, along with copies of all pertinent work papers. ENERCON may terminate this Agreement upon thirty (30) days written notice to Company. Thereafter ENERCON shall complete the project(s) on which it is working at the time of termination and will be paid for all properly completed work in accordance with this Agreement.

Should Company reasonably determine that particular personnel provided by ENERCON are not satisfactory or are requested by Company to be replaced for good cause shown, ENERCON shall cause said personnel to immediately cease further work on the project and have said personnel removed from the project. ENERCON shall thereafter coordinate with Company for the timely replacement of the terminated personnel.

#### Section 7. Government Hearings

ENERCON understands that as a result of its work and the special knowledge it may acquire, and in order to defend and explain the conclusions it may reach pursuant to its work, it may be called upon to appear as an expert witness at government hearings. ENERCON agrees it shall appear in such hearings when required by Company. ENERCON shall also participate in the preparation of testimony, reports or other documents required in government hearings when called upon to do so by Company. Because such work is not typically reimbursed by the OCC Indemnity Fund, ENERCON will prepare a proposal for Company's approval and shall be compensated for its time at regular rates for expert testimony when it is required to appear in such hearings or participate in such testimony or document preparation. Any travel and reimbursable expenses necessitated shall also be reimbursed by Company.

#### Section 8. Agents

As used in this Agreement, the "ENERCON's Agent" shall mean Mr. Derek Richard, or shall mean an officer of ENERCON.

#### Section 9. Insurance

ENERCON shall provide and maintain in full force and effective during the term of this Agreement: (a) Worker's Compensation insurance with limits required by law of an employer, and employer's liability

insurance with minimum limits of \$1,000,000.00; and (b) comprehensive General Liability and Automobile Liability insurance for damages because of injuries including death, suffered by persons other than employees of ENERCON and liability from damages to property arising from and growing out of any operation of ENERCON (including the operations of automobiles, trucks or other vehicles non-owned and hired) in connection with the performance of this Agreement.

Current Coverage:

General Liability	\$2,000,000
Automobile Liability	\$1,000,000
Excess Liability (Umbrella)	\$4,000,000
Workers Compensation (State Limits)	\$500,000
Professional Liability	\$1,000,000
Pollution Liability	\$1,000,000

Section 10. Publicity and Confidentiality

ENERCON shall not publish or make known to others any information which is proprietary or confidential to Company which is obtained by ENERCON in connection with or as a result of its work hereunder and which is not in the public domain. Company shall not publish or make known to others any information provided or used by ENERCON which is proprietary or confidential to ENERCON and is not generated directly as a result of work performed by ENERCON on behalf of Company.

This obligation of nondisclosure shall survive the termination of this Contract.

Section 11. Independent ENERCON

It is stipulated and agreed that ENERCON shall be and is an independent contractor in the performance of this agreement. ENERCON, an independent contractor, shall be free to exercise its discretion as to methods and means of performance of its services, and in no sense shall any employee of ENERCON be considered an employee or agent of Company, nor shall any employee of ENERCON be entitled to, or eligible to participate in, any benefits, privileges or plans given or extended by Company to its employees.

Section 12. Notice

All notices, requests, demands, and other communication hereunder shall be in writing and shall be deemed to have been duly given if sent by certified mail, return receipt requested, or transmitted by fax to:

- a. Tulsa County  
Mr. Alex Mills  
500 South Denver Avenue, Floor 3  
Tulsa, Oklahoma 74103  
Telephone – (918) 596-5736  
E-mail – amills@tulsacounty.org
  
- b. Enercon Services, Inc. (ENERCON)  
Mr. Derek Richard  
5100 East Skelly Drive, Suite 450  
Tulsa, Oklahoma 74135  
Telephone - (918) 665-7693  
Fax - (918) 665-7232

### Section 13. Professional Responsibility

ENERCON hereby represents and warrants all work which it shall elect to undertake under this Agreement shall be performed in a good and workmanlike manner and in compliance with generally accepted standards of its profession. ENERCON represents by the acceptance of work under this Agreement that it has sufficient expertise and personnel to perform the work assigned to it in a professional and timely manner.

The warranty set forth in this Section is the only warranty made by ENERCON pertaining to the work, and neither Company nor ENERCON shall be liable to the other under this Contract for any consequential damages including but not limited to loss of interest, loss of use, loss of profits, or any other special or indirect damages however caused, regardless of ENERCON's or Company's fault or negligence.

### Section 14. Force Majeure

Any loss or damage or delays in, or failure of performance of either Party shall not constitute default or give rise to any claims for damages if and to the extent that such loss, damage, delay or failure is caused by "Force Majeure" which is, for this purpose, defined as occurrences beyond the reasonable control of the Party affected, and which, by the exercise of reasonable diligence, said Party is unable to prevent.

### Section 15. Site Operations

Company will arrange for right-of-entry to the property for the purpose of performing studies, tests and evaluations pursuant to the agreed services.

ENERCON's field personnel are trained to initiate field testing, drilling and/or sampling within a reasonable distance of each designated location. ENERCON field personnel will avoid hazards or utilities which are visible to them at the site. ENERCON is not responsible for any damage or losses due to undisclosed or unknown surface or subsurface conditions, owned by Company or third parties.

ENERCON will take reasonable precautions to minimize damage to the property caused by ENERCON's operations. ENERCON's fee does not include any cost of restoration due to any damage which may result. If Company desires ENERCON to repair such damage, ENERCON will comply and add the cost to the fees as mutually agreed in writing between Company and ENERCON.

Field tests or boring locations described in ENERCON's report or shown on sketches are based on specific information furnished by others or estimates made in the field by ENERCON's personnel. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in ENERCON's proposal or report.

The presence of ENERCON field personnel, either full time or part-time, will be for the purpose of providing observation and field testing of specific aspects of the project as authorized by the OCC and Company. Should a contractor not retained by ENERCON be involved in the project, Company will advise contractor that ENERCON's services do not include supervision or direction of the actual work of the contractor, his employees or agents. Company will also inform contractor that the presence of ENERCON field representatives or observation or testing by ENERCON will not relieve the contractor of his responsibilities for performing the work in accordance with the plans and specifications.

If contractor (other than a subcontractor to ENERCON) is involved in the project, Company agrees that, in accordance with generally accepted construction practices, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during performance of the work, and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. It is agreed that ENERCON will not be responsible for job or site safety on the project and that ENERCON does not have the duty or right to stop the work of the contractor.

#### Section 16. Hazardous or Potentially Hazardous Samples or Materials

In the event that samples or materials contain hazardous constituents, ENERCON may return such samples or materials to Company, or using a manifest signed by Company as generator, ENERCON will

have such samples or materials transported to a location selected by Company for final disposal. Company agrees to pay all costs associated with the storage, transport, and disposal of such samples or materials. Company recognizes and agrees that ENERCON is acting as a bailee and at no time assumes title to said samples or materials.

#### Section 17. Disclosure of Toxic or Hazardous Materials at the Project Site

Company warrants to ENERCON that it is aware that only the following hazardous substances, toxic materials or conditions exist at the property site: Petroleum, Gasoline, and Diesel.

Company agrees to advise ENERCON upon the Definition of Services under this Agreement and of any hazardous substances or any condition, known or that should be known by Company, existing in, on, or near the site that presents a potential danger to human health, the environment, or equipment. Company agrees to provide continuing information as it becomes available to ENERCON in the future. By virtue of entering into this Agreement or of providing services hereunder, ENERCON does not assume control of or responsibility for the site or the person in charge of the site, or undertake responsibility for reporting to any federal, state or local public agencies any conditions at the site that may present a potential danger to public health, safety or the environment. Company agrees to notify the appropriate federal, state or local public agencies as required by law, or otherwise to disclose, in a timely manner, any information that may be necessary to prevent any danger to health, safety, or the environment.

#### Section 18. Environmental Indemnity

Section Removed

#### Section 19. Indemnification

ENERCON shall indemnify and hold Company harmless for any loss, cost, damage or injury to any of the employees or agents of ENERCON or to third persons, arising directly or indirectly out of, or in the course of, performance of the services under this Agreement and which are caused by or result from the negligence of ENERCON, its officers, agents, servants, employees, or subcontractors. Nothing in this paragraph shall make ENERCON liable for any damages caused by the Company or any other Contractor of the Company.

#### Section 20. Assignment

ENERCON shall not assign this Agreement nor sublet any of the work to be performed hereunder without the express written consent of Company, and any such assignment or subletting, whether expressly authorized by this Agreement or done with such consent, shall not relieve the ENERCON from responsibility for the performance of the work hereunder in accordance with the terms hereof nor from its responsibility for the performance of any other of its obligations hereunder.



Section 21. Nonwaiver

The failure of one party to insist upon or enforce, in any instance, strict performance by the other party of any of the terms of this Agreement or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

Section 22. Modification

No waiver, alteration, consent or modification of any of the provisions of this Agreement shall be binding unless in writing and assigned by a duly authorized representative of the party to be bound.

Section 23. Controlling Law

This Agreement shall be controlled by the laws of the State of Oklahoma. Venue for enforcement of this Agreement shall be exclusive to the courts located in Tulsa County, Oklahoma.

Section 24. Complete Agreement

This Agreement shall constitute the entire Agreement between Company and ENERCON pertaining to its subject matter and supersedes all prior and contemporaneous negotiations, agreements, and understandings of either or both parties in connection herewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or have caused it to be duly executed on their behalf the day and year first above written.

Signed:

**Board of County Commissioners of the County of Tulsa, Oklahoma**

By   
Chair, Board of County Commissioners of the County of Tulsa, Oklahoma

Date 05/26/2020

Approved as to form:

**James G. Rea** Digitally signed by James G. Rea  
Date: 2020.05.18 13:12:43 -05'00'

Assistant District Attorney

Attest:   
Michael Willis, County Clerk



**ENERCON Services, Inc.**

By  Derek L. Richard

Date 5/18/2020