

BID PROPOSAL
FOR
Ward 1 Residential Street Improvements:
Timber Creek Way and Kelsi Drive

THE UNDERSIGNED BIDDER, having examined the plans, specifications, the locations, arrangements and conditions of roads, streets, utilities and other facilities or appurtenances which affect or may be affected by the proposed work, the actual sites of the proposed improvements and being acquainted with and fully understanding: (1) the extent and character of the work covered by this proposal; (2) the locations and specified requirements of and for the proposed improvements and other items of work appurtenant thereto; (3) the normal existing, and probable construction difficulties, hazards or all other factors or conditions which may or may not be apparent, which may affect or be affected by the specified work.

HEREBY PROPOSES to furnish all required supplies, equipment, tools, and plant; to perform all necessary labor; and to install, construct, and complete all work stipulated in, required by, and in accordance with the contract documents hereto attached, for and in connection with the contract for which this proposal is herein submitted for and in consideration of the prices set out herein.

The undersigned bidder hereby agrees to furnish the required Performance Bond, Statutory Bond, Maintenance Bond, and proof of insurance and to enter into a contract within fourteen (14) days after the acceptance of this proposal, and further agrees to complete the work within a period of time not to exceed a hundred and twenty (120) working days following receipt of the Owner's Work Order authorizing the Contractor to commence work.

Attached hereto is a Certified Check, Cashier's Check or Bidder's Surety Bond in the amount of:

DOLLARS \$

_____ which the undersigned agrees is to be forfeited to and become the property of the City, as liquidated damages, should this proposal be accepted and the contract be awarded to him, he fails to enter into a contract in the form prescribed and to furnish the required bonds and proof of insurance within fourteen (14) days as above stipulated, but otherwise the proposal guarantee shall be returned to the undersigned upon the signing of the contract and delivery of the approved bonds and evidence of insurance to said Owner.

DATED this ____ day of _____, 2022.

RESPECTFULLY SUBMITTED,

By: _____

Title: _____

Address: _____

(AFFIX SEAL-if bid is by a corporation)

Addendum No.

Date Received

Signature

BID SCHEDULE
Ward 1 Residential Street Improvements

Bid Proposal Form - Timber Creek Way							
PAY QUANTITIES							
<u>ITEM NO.</u>	<u>SPEC. NO.</u>		<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
1	201(A)	1200	CLEARING AND GRUBBING	LSUM	1		\$
2	202(A)	2200	UNCLASSIFIED EXCAVATION	CY	535		\$
3	221(B)	2300	TEMPORARY SILT FENCE	LF	64		\$
4	221(C)	2400	TEMPORARY SEDIMENT FILTER	EA	2		\$
5	230(A)	7200	SOLID SLAB SODDING	SY	575		\$
6	303(A)	1200	AGGREGATE BASE TYPE A	CY	535		\$
7	310(B)	5300	SUBGRADE METHOD B	SY	3,192		\$
8	325	0100	SEPARATOR FABRIC	SY	3,752		\$
9	408	8100	PRIME COAT	GAL	320		\$
10	414(B)	5300	DOWEL JOINTED P.C. CONCRETE PAVEMENT(PACEMENT)	SY	2,431		\$
11	414(G)	5800	P.C. CONCRETE FOR PAVEMENT	CY	474		\$
12	609(B)	4305	COMBINED CURB AND GUTTER (5" MOUNTABLE)	LF	1,917		\$
13	610(B)	5300	6" CONCRETE DRIVEWAY (H.E.S.)	SY	204		\$
14	619(A)	6200	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LSUM	1		\$
15	619(B)	6364	REMOVAL OF ASPHALT PAVEMENT	SY	2,372		\$
16	619(B)	6380	REMOVAL OF CONCRETE DRIVEWAY	SY	204		\$
17	619(B)	6356	REMOVAL OF CURB AND GUTTER	LF	2,048		\$
18	629(D)	7500	REMOVE AND REPLACE MAILBOX	EA	7		\$
19	641	2110	MOBILIZATION	LSUM	1		\$
20	642	3200	CONSTRUCTION STAKING LEVEL I	LSUM	1		\$
21	805(A)	3244	(PL) REMOVAL OF GROUND MOUNTED SIGNS	EA	2		\$

22	850(A)	1200	SHEET ALUMINUM SIGNS	SF	19		\$
23	851(C)	2415	2" SQUARE TUBE POST	LF	20		\$
24	880(J)	7110	CONSTRUCTION TRAFFIC CONTROL	LSUM	1		\$
25	SPECIAL		TEMPORARY MAILBOXES	EA	7		\$

TOTAL AMOUNT FOR TIMBER CREEK WAY: \$

Bid Proposal Form - Kelsi Drive

PAY QUANTITIES

<u>ITEM NO.</u>	<u>SPEC. NO.</u>		<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
1	201(A)	1200	CLEARING AND GRUBBING	LSUM	1		\$
2	202(A)	2200	UNCLASSIFIED EXCAVATION	CY	1,558		\$
3	221(B)	2300	TEMPORARY SILT FENCE	LF	62		\$
4	221(C)	2400	TEMPORARY SEDIMENT FILTER	EA	10		\$
5	221(E)	2600	TEMPORARY SILT DIKE	EA	1		\$
6	230(A)	7200	SOLID SLAB SODDING	SY	1,448		\$
7	303(A)	1200	AGGREGATE BASE TYPE A	CY	1,558		\$
8	310(B)	5300	SUBGRADE METHOD B	SY	9,329		\$
9	325	0100	SEPARATOR FABRIC	SY	9,763		\$
10	408	8100	PRIME COAT	GAL	2,441		\$
11	414(B)	5300	DOWEL JOINTED P.C. CONCRETE PAVEMENT(PLACEMENT)	SY	8,191		\$
12	414(G)	5800	P.C. CONCRETE FOR PAVEMENT	CY	1,596		\$
13	609(B)	4360	COMBINED CURB AND GUTTER (6" BARRIER)	LF	4,344		\$
14	610(A)	5200	4" CONCRETE SIDEWALK	SY	228		\$
15	610(B)	5300	6" CONCRETE DRIVEWAY (H.E.S.)	SY	1,148		\$
16	610(I)	6000	TACTILE WARNING DEVICE - NEW	SF	168		\$

17	612(E)	3600	VALVE BOXES ADJUSTED TO GRADE	EA	1		\$
18	619(A)	6200	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LSUM	1		\$
19	619(B)	6364	REMOVAL OF ASPHALT PAVEMENT	SY	6,822		\$
20	619(B)	6360	REMOVAL OF CONCRETE PAVEMENT	SY	1,359		\$
21	619(B)	6380	REMOVAL OF CONCRETE DRIVEWAY	SY	1,148		\$
22	619(B)	6356	REMOVAL OF CURB AND GUTTER	LF	4,344		\$
23	619(B)	6404	REMOVAL OF SIDEWALK	SY	160		\$
24	629(D)	7500	REMOVE AND REPLACE MAILBOX	EA	48		\$
25	641	2110	MOBILIZATION	LSUM	1		\$
26	642(A)	3110	CONSTRUCTION STAKING LEVEL I	LSUM	1		\$
27	805(A)	3244	(PL) REMOVAL OF GROUND MOUNTED SIGNS	EA	12		\$
28	850(A)	1200	SHEET ALUMINUM SIGNS	SF	63		\$
29	851(C)	2415	2" SQUARE TUBE POST	LF	99		\$
30	880(J)	3114	CONSTRUCTION TRAFFIC CONTROL	LSUM	1		\$
31	SPECIAL		TEMPORARY MAILBOXES	EA	48		\$

TOTAL AMOUNT FOR KELSI DRIVE:	\$
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TOTAL AMOUNT BASE BID (TIMBER CREEK WAY + KELSI DRIVE):	\$
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TOTAL AMOUNT BASE BID IN WORDS:	DOLLARS
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Name and Address of Bidder

Telephone No.

Contact Person:

Title:

List the Name and Address of all Proposed Subcontractors

Scope and Percentage
of Work

CONTRACT

THIS CONTRACT made and entered into this 16th day of May, 2022, by and between CITY OF MOORE, Oklahoma, a Municipal Corporation, acting by and through the Mayor and City Council, party of the first part, hereinafter referred to as "CITY", and _____, party of the second part, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, the CITY has caused to be prepared in accordance with law, certain Contract Documents and Technical Specifications (including Plans) for the work hereinafter described, and has caused a Solicitation for Bids to be given and advertised as required by law, and has received sealed proposals for the furnishing of all labor and materials for

Ward 1 Residential Street Improvements: **Timber Creek Way and Kelsi Drive**

and

WHEREAS, the Contractor in response to said Solicitation for Bids submitted to the CITY in the manner and at the time specified a sealed proposal in accordance with the terms and provisions of said Contract Documents and Technical Specifications, Plans and Addenda(s) associated with this project; and

WHEREAS, the CITY, in the manner provided by law, has publicly opened, examined, and canvassed all the proposals submitted and has determined and declared the above-named Contractor to be the best responsive bidder on the above-described project; and

WHEREAS, the City, has duly awarded this Contract to said Contractor for the sum specified in the Contractor's proposal, to wit:

_____ Said proposal of
_____ is incorporated by reference into this
contract.

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants herein contained, the parties to this Contract have agreed, and hereby agree, as follows:

1. The Contractor shall, in a good and first-class workmanlike manner, at his own cost and expense, furnish all labor and materials, tools, and equipment required to perform and complete said work in strict accordance with this Contract, the Contract Documents and Technical Specifications and all applicable Plans and Addenda, all of which are on file in the office of the City Clerk, 301 N. Broadway, Moore, OK, 73160, and hereby incorporated by reference and made a part of this Contract as if the same were each herein set out at length.

2. The CITY will make progress payments to the Contractor no more than once per month upon request of the Contractor. Such payment will be made on the basis of an agreed estimate of work performed since the previous pay request, provided that the Contractor and the City shall have previously come to an agreement as to the amount of the request prior to submission.

The City shall retain five percent (5%) of the amount of each estimate until the project is complete. This retainage shall not be released until final acceptance of project by the City Council.

Each monthly estimate for payment must contain or have attached an affidavit for payment, as set forth in the Contract Documents and Technical Specifications.

On completion of the work, but prior to the acceptance by the CITY, it shall be the duty of the Assistant City Manager, or his authorized designee, to determine that said work has been completed and fully performed in accordance with said Contract Documents and Technical Specifications and all applicable Plans and Addenda; and upon making such determination said official shall make his final certificate to the CITY.

The Contractor hereby agrees to commence work under this Contract on a date to be specified in a written "Work Order" of the CITY and to fully complete the project within **120 consecutive calendar days**. The Contractor further agrees to pay as liquidated damages, the sum of **Five Hundred Dollars and 00/100 (\$500.00) for each consecutive calendar day** thereafter as provided in the General Conditions section of the Contract Documents and Technical Specifications.

The Contractor shall furnish proof that all claims and obligations incurred by him in connection with the performance of said work have been fully paid and settled; said information shall be in the form of an affidavit constituting the Contractor's Release to City as set forth in the Contract Documents and Technical Specifications; thereupon, the final estimate (including any retained amounts) will be approved and paid.

3. Discrimination. The Contractor agrees in connection with the performance of work under this contract as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, disability, age or ancestry. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, (including apprenticeship.) The Contractor agrees to include this non-discrimination clause in any subcontracts connected with the performance of this Contract.

- b. The Contractor and subcontractor shall agree to post in a conspicuous place available to employees and applicants for employment, notice setting forth provisions of this section.
 - c. In the event of the Contractor's non-compliance with the above non-discrimination clause, this Contract may be terminated by the CITY. The Contractor may also be declared by the CITY to be ineligible for future contracts with the CITY until satisfactory proof of intent to comply shall be made by the Contractor.
- 4. Use of Subcontractors. In the event Contractor deems it necessary to employ subcontractors, the Contractor shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. At the request of the CITY, the Contractor shall furnish evidence of compliance with this requirement of minority solicitation. The Contractor further agrees to consider the grant of subcontracts to minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses.
- 5. Entire Contract. This Contract and all the documents incorporated by reference contain the entire understanding and agreement of the parties upon the subject matter hereof. There is no agreement, oral or otherwise, which is not set forth in writing hereto or attached. This Contract includes the following items: this Contract, the Contract Documents and Technical Specifications, all applicable Plans and Addenda and the Contractor's Proposal.
- 6. Modification and Termination. This Contract cannot be modified or terminated except in writing signed by both parties or as otherwise provided herein.
- 7. Assignment. This Contract shall not be assigned without the written consent of the CITY.
- 8. Bankruptcy. If the Contractor becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against the Contractor, or if a receiver is appointed for the Contractor, the CITY shall have the right to terminate this Contract upon written notice to the Contractor without prejudice to any claim for damages or any other right of the CITY under this Contract to the time of such termination.
- 9. Variables in Cost. The parties hereto assume and understand that the variables in Contractor's cost of performance may fluctuate; consequently, the parties hereto agree that any fluctuations in Contractor's costs will in no way alter the Contractor's obligations under this Contract nor excuse performance or delay on his part.
- 10. Choice of Laws and Venue. This Contract shall be governed by the laws of the State of Oklahoma. Any lawsuit brought concerning this Contract shall be filed with the appropriate state court, Cleveland County, Oklahoma or with the United States District Court for Western District of Oklahoma, as applicable.

11. This Contract requires proper signature and acceptance by the Contractor and approval by the Moore City Council before it becomes effective.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, in three (3) originals, the day and year first above written.

(FOR CORPORATIONS ONLY)

Name of Corporation

By _____

Title _____

ATTEST:

Title _____

(AFFIX SEAL)

(FOR PARTNERSHIPS AND PROPRIETORSHIPS)

Name of Partnership or Proprietorship

By _____

Title _____

COUNTY OF CLEVELAND }

STATE OF OKLAHOMA }

Before me the undersigned, a Notary Public in and for said state, on this ____ day of _____, 20__, personally appeared _____, a member of the partnership/proprietorship _____ to me known to be the identical person who executed the within and foregoing instrument on behalf of said partnership/proprietorship and acknowledged to me that _____ (he/she) executed the same as _____ (his/her) free and voluntary act and deed, and for the free and voluntary act and deed of said partnership/proprietorship, for the uses and purposes therein set forth.

Notary Public

My Commission Expires _____

CITY OF MOORE, OKLAHOMA
A Municipal Corporation

Glenn Lewis, MAYOR

ATTEST:

Vanessa Kemp, CITY CLERK

APPROVED as to form and legality this _____ day of _____, 20__.

Randy Brink, CITY ATTORNEY

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that

_____ as Principal, and
(full name and address)

_____ as Surety, a
(full name and address)

corporation organized under the laws of the State of _____, and authorized to transact business in the State of Oklahoma, are hereby held and firmly bound unto the CITY OF MOORE, as OWNER, in the penal sum

of _____ DOLLARS (\$_____) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, trustees, successors, and assigns, firmly by these presents.

The condition of this obligation is such that WHEREAS, said Principal entered into a written contract with the CITY OF MOORE, OKLAHOMA, dated on the _____ day of _____, 2019, for

Ward 1 Residential Street Improvements:
Timber Creek Way and Kelsi Drive

all in compliance with the plans and specifications therefore, made a part of said Contract and on file in the Office of the City Clerk, City of Moore, City Hall, 301 N. Broadway, Oklahoma 73160.

NOW, THEREFORE, if said Principal shall

- (1) in all particulars, well, truly and faithfully perform and abide by said Contract, each and every covenant, and part thereof and shall fulfill all obligations resting upon said Principal by the terms of said Contract and said specifications; and
- (2) if said Principal shall promptly pay, or cause to be paid, all labor, materials and/or repairs and all bills for labor performed on said work, whether by subcontract or otherwise.

then this obligation shall be null and void. **Otherwise** said obligation shall be and remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode or procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligation of this bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized to do so, the day and year above written.

Dated this _____ day of _____, 20__.

Principal:

Surety:

(Name of Contractor)

By: _____
(Name & Title)

By: _____
Attorney-in-Fact (Affix Seal)

(FOR CORPORATIONS ONLY)

ATTEST:

(Name & Title)

(Affix Seal)

(FOR PARTNERSHIPS AND PROPRIETORSHIPS)

Notarized on this _____ day of _____, 20__

Notary: _____ My commission expires:

STATUTORY BOND

KNOW ALL MEN BY THESE PRESENTS that

_____ as Principal, and
(full name and address)

_____ as Surety, a
(full name and address)

corporation organized under the laws of the State of _____, and authorized to transact business in the State of Oklahoma, are hereby held and firmly bound unto the CITY OF MOORE, as OWNER, in the penal sum of

_____ DOLLARS (\$_____) in lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that WHEREAS, said Principal entered into a written Contract with the CITY OF MOORE, OKLAHOMA, dated on the ____ day of _____, 20__, for

Ward 1 Residential Street Improvements:
Timber Creek Way and Kelsi Drive

all in compliance with the plans and specifications therefore, made a part of said Contract and on file in the Office of the City Clerk, City Hall, City of Moore, City Hall, 301 N. Broadway, Moore, Oklahoma 73160.

NOW, THEREFORE, if said Principal shall fail or neglect to pay all indebtedness incurred by said Principal or subcontractors of said Principal who perform work in the performance of such contract, for labor and materials and repairs to and parts for equipment used and consumed in the performance of said Contract within thirty (30) days after the same becomes due and payable, the person, firm, or corporation entitled thereto may sue and recover on this bond, the amount so due and unpaid. It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this bond.

IN WITNESS WHEREOF, said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the year and day first above written.

Dated this ____ day of _____, 20__.

Principal:

Surety:

(Name of Contractor)

By: _____
(Name & Title)

By: _____
Attorney-in-Fact (Affix Seal)

(FOR CORPORATIONS ONLY)

ATTEST:

(Name & Title) (Affix Seal)

(FOR PARTNERSHIPS AND PROPRIETORSHIPS)

Notarized on this ____ day of _____, 20__

Notary: _____ My commission expires: _____

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS that

_____ as Principal, and
(full name and address)

_____ as Surety, a
(full name and address)

corporation organized under the laws of the State of _____, and authorized to transact business in the State of Oklahoma, are hereby held and firmly bound unto the CITY OF MOORE, as OWNER, in the penal sum of

_____ DOLLARS (\$_____) in lawful money of the United States of America, said sum being equal to One Hundred Percent (100%) of the Contract price, for two (2) years after completion and acceptance of the project, payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that WHEREAS, said Principal entered into a written contract with the CITY OF MOORE, OKLAHOMA, dated on the ____ day of _____, 20__, for

Ward 1 Residential Street Improvements:
Timber Creek Way and Kelsi Drive

all in compliance with the plans and specifications therefore, made a part of this contract and file in the Office of the City Clerk of the City of Moore, City Hall, Moore, City Hall, 301 N. Broadway, Moore, Oklahoma 73160.

NOW, THEREFORE, if said Principal shall pay or cause to be paid to the CITY OF MOORE, OKLAHOMA all damage, loss and expense which may result by reason of defective materials and/or workmanship in connection with said work for a period of TWO (2) years, from and after acceptance of said project by the CITY OF MOORE and if Principal shall pay or cause to be paid all labor and materials, including the prime contractor and all subcontractors; and if Principal shall save and hold the CITY OF MOORE harmless from any failure whatsoever of said Principal, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of the bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized to do so, the day and year first above written.

Dated this _____ day of _____, 20__.

Principal:

Surety:

(Name of Contractor)

By: _____
(Name & Title)

By: _____
Attorney-in-Fact (Affix Seal)

(FOR CORPORATIONS ONLY)

ATTEST:

(Name & Title)

(Affix Seal)

(FOR PARTNERSHIPS AND PROPRIETORSHIPS)

Notarized on this _____ day of _____, 20__

Notary: _____ My commission expires: _____

General Conditions Contents

1. Contract and Contract Documents
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CITY OF MOORE
GENERAL CONDITIONS

1. Contract and Contract Documents

The Plans, Specifications, and Addenda, shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

2. Definitions

The following terms as used in this contract are respectively defined as follows:

- a. "Contractor": A person, firm or corporation with whom the contract is made by the Owner.
- b. "Subcontractor": A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreements with, the Contractor.
- c. "Work on (at) the project": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor or any Subcontractor.
- d. "Engineer": The term engineer shall apply to the Assistant City Manager or his duly designated representative, to include consultants hired by the Owner to provide advice, assistance or direction concerning the contract.
- e. "Owner": The term Owner shall apply to the City of Moore, A Municipal Corporation, also referred to as the "CITY."

3. Additional Instructions and Detail Drawings

The Contractor will be furnished additional instructions and detailed drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Engineer will prepare jointly: (a) a schedule, fixing the dates at which special detail drawings will be required; such drawings, if any, to be furnished by the

Engineer in accordance with said scheduled; and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

4. Shop or Setting Drawings

The Contractor shall submit promptly to the Engineer six copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Engineer with two corrected copies. If requested by the Engineer, the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Engineer, the Contractor will nevertheless be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless he notifies the Engineer in writing of any deviations at the time, he furnishes such drawings.

5. Materials, Services, and Facilities

- a. It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.
- b. Any work necessary to be performed after regular hours, on Sundays or Legal Holidays, shall be performed without additional expense to the Owner.

6. Contractor's Title to Materials

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale contract, or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

7. Inspection and Testing of Materials

- a. All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Contractor. The Contractor will pay for all laboratory inspection service direct, and not as a part of the contract.

- b. Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

8. "Or Equal" Clause

Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, etc., it is intended merely to establish a standard. Any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Engineer, of equal substance and function. The proposed substitution shall not be purchased or installed by the contractor without the Engineer's written approval.

9. Patents

- a. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.
- b. License or Royalty Fees. License and/or royalty fees for the use of a process that is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the Owner and not by or through the Contractor.
- c. If the Contractor uses any design, device or materials covered by letters, patents or copyrights, he shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

10. Surveys, Permits, and Regulations

- a. Unless otherwise expressly provided for in the Specifications, the Contractor shall be responsible for all surveying and construction staking for the project and the Owner

shall furnish to the Contractor all survey control points necessary as indicated in project drawings.

- b. The Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of his contract.
- c. The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

11. Contractor's Obligations

- a. The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time herein specified, in accordance with the provisions of this contract and said specifications and in accordance with the plans and drawings covered by this contract any and all supplemental plans and drawings. He shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required.
- b. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the Owner.

12. Weather Conditions

In the event of suspension of work, or during inclement weather, or whenever the Engineer shall direct, the Contractor will, and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor.

13. Protection of Work and Property- (Emergency)

- a. The Contractor shall at all times safely guard the Owner's property from damage in connection with this contract. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such be caused directly by errors contained in the contract or by the Owner, or his duly authorized representatives.
- b. In case of emergency which threatens loss or injury of property, and/or safety of life the Contractor will be allowed to act, without previous instructions from the

Engineer, in a diligent manner. He shall notify the Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Engineer for approval.

- c. Where the Contractor has not taken action but has notified the Engineer of an emergency threatening injury to persons or damage to the work or any adjoining property, he shall act as instructed or authorized by the Engineer.
- d. The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 22 of the General Conditions.

14. Inspection

The authorized representatives and agents of the Owner shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

15. Reports, Records, and Data

The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Owner may request concerning work performed or to be performed under this Contract.

16. Superintendence by Contractor

At the site of the work, the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be one who can be continued in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll.

17. Extras

Without invalidating the contract, the Owner may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal; and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the Owner and the price is stated in such order.

18. Time for Completion and Liquidated Damages

- a. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this

contract; and it is further understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed".

- b. The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same; taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- c. If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor hereby agrees, as a part consideration for the awarding of this contract, to pay to the Owner the amount specified in the contract, **not as a penalty but as liquidated damages for such breach of contract** as hereinafter set forth, for each and every consecutive calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work.
- d. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain; and said amount is agreed to be the amount of the damages which the Owner would sustain and shall be retained from time to time by the Owner from current periodical estimates.
- e. It is agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever. Where, under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract.
- f. The Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner.
- g. The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to:
 - (1) To any preference, priority, or allocation order duly issued by the Owner;
 - (2) To unforeseeable cause beyond the control and without the fault or the negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather occurring prior to the original completion

date. Except that in the case of severe weather the original completion date as set out in the contract shall be adjusted for severe weather occurring prior to the date originally specified in the contract as the date on which all work pursuant the terms of the contract is to be completed. The revised date, adjusted as described, will be known as the adjusted completion date. There shall be no further adjustment or adjustments to the adjusted completion date, for any reason, once the adjusted completion date has been determined. All conditions of the contract must be satisfied by the Contractor on or before the original completion date or adjusted completion date, which ever is applicable. If all contract requirements have not been met by the original completion date or adjusted completion date, if applicable, liquidated damages, regardless of weather conditions, shall apply for all subsequent days until the actual completion of the contract terms by the contractor.

(3) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (1) and (2) of this article;

h. Provided, that the Contractor shall, within ten (10) days from the beginning of delay as set forth in (g) above, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, of the causes of delay. The Owner shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

19. Correction of Work

All work, materials, (whether incorporated in the work or not), all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet his approval, they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at his own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, payment to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Engineer shall be equitable.

20. Subsurface Conditions Found Different

Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, he shall immediately give notice to the Engineer of such conditions before they are disturbed. The Engineer will thereupon promptly investigate the conditions, and if he finds that they materially differ from those shown on the Plans or indicated in the Specifications, he will at once make such changes in the Plans and/or Specifications as he may find necessary. Any

increase or decrease of cost resulting from such changes shall be adjusted in the manner provided in Paragraph 22 of the General Conditions.

21. Claims for Extra Cost

No claim for extra costs or cost shall be allowed unless the same was done in pursuance of a written order of the Engineer approved by the Owner, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of subparagraph 22(b) of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the Owner, give the Owner access to accounts relating thereto.

22. Changes in Work

No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- a. Unit bid prices previously approved.
- b. The actual cost of:
 - (1) Labor, including foreman,
 - (2) Materials entering permanently into the work,
 - (3) The ownership or rental cost of construction plant and equipment during the time of use on the extra work,
 - (4) Power and consumable supplies for the operation of power equipment,
 - (5) Insurance,
 - (6) Social Security and old age and unemployment contributions.

To the cost under b., there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

23. Right of Owner to Terminate Contract

In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate the contract. Such notices shall contain the reasons for such intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Owner shall immediately

serve notice thereof upon the Surety and the Contractor; and the Surety shall have the right to take over and perform the contract. If the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract at the expense of the Contractor. The Contractor and his Surety shall be liable to the Owner for any excess cost occasioned the Owner thereby; and in such event, the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

24. Construction Schedule and Periodic Estimates

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner as estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the Owner, (a) a detailed estimate giving a complete breakdown of the contract price, and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

25. Payments to Contractor

- a. At the request of the Contractor and no more than once per month, the Owner shall make a progress payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this contract. To ensure the proper performance of this contract, the City shall retain 5% of the amount of each estimate. On completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made in full, including retained percentages thereon, less authorized deductions.
- b. In preparing estimates, the material delivered on the site and preparatory work done may be taken into consideration.
- c. All material and work covered by partial payments made shall thereupon become the sole property of the Owner. This provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all the terms of the contract.

- d. The Owner reserves the right to withhold certain amounts and make application thereof. Specifically, the Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails to do so, then the Owner may, after having served written notice on the said Contractor, pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract. In no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor or his Surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

26. Acceptance of Final Payment Constitutes Release

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and other relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract or the Performance and Payment Bond.

27. Payments by Contractor

The Contractor shall pay,

- a. for all transportation and utility services not later than the 20th day of the calendar month following that in which services are rendered,
- b. for all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of the cost thereof, not later than the 20th day of the calendar month following that in which said materials, tools, equipment are delivered at the site of the project, and the balance of the cost thereof, not later than the 30th day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used, and
- c. to each of his subcontractors, not later than the 5th day following each payment to the Contractor the respective amounts allowed the Contractor on account of the work performed by his subcontractors to the extent of each subcontractor's interest therein.

28. Insurance

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

- a. **Worker's Compensation Insurance.** The Contractor shall procure and shall maintain during the life of this contract Worker's Compensation Insurance as required by the State of Oklahoma for all of his employees to be engaged in work at the site of the project under this contract, and in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.
- b. **Contractor's General Liability and Property Damage Insurance and Vehicle Liability Insurance.** The Contractor shall procure and shall maintain during the life of this contract, Contractor's General Liability Insurance, Contractor's Property Damage Insurance, and Vehicle Liability Insurance as follows:

Comprehensive General Liability and Bodily Injury:

Bodily Injury	<u>\$ 125,000.00</u> per person per occurrence
Property Damage	<u>\$ 100,000.00</u> each occurrence
Combined Single Limit	<u>\$1,000,000.00</u> per occurrence combined limit

Comprehensive Automobile:

Liability, Bodily Injury	<u>\$ 125,000.00</u> per person per occurrence
Property Damage	<u>\$ 100,000.00</u> each occurrence
Combined Limit	<u>\$1,000,000.00</u> per occurrence combined limit

- c. **Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance.** The Contractor shall either,
 - (1) require each of his subcontractors to procure, and to maintain during the life of his subcontract, Subcontractor's Public Liability Insurance of the type and in the amounts specified in subparagraph (b) hereof, or
 - (2) ensure the activities of his subcontractors in his own policy, specified in subparagraph (b) hereof.

- d. Scope of Insurance and Special Hazards. The insurance required under subparagraphs b. and c. hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him, and also against any of the special hazards which may be encountered in the performance of this contract.
- e. Builder's Risk Insurance (Fire and Extended Coverage). Until the project is completed and accepted by the Owner, the Contractor (at the Owner's option) is required to maintain Builder's Risk Insurance (fire and extended coverage) on a one hundred percent (100%) completed value basis on the insurable portion of the project for the benefit of the Owner, the Contractor, and subcontractors as their interests may appear. This provision shall not release the Contractor from his obligation to complete, according to the plans and specifications, the project covered by the contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.
- f. Proof of Carriage of Insurance. The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certification will not be canceled or materially altered, except after ten (10) days written notice has been received by the Owner."

29. Contract Security

The Contractor shall furnish a Performance Bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract and also a Statutory Bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The Performance Bond and the Statutory Bond may be in one or in separate instruments in accordance with local law.

30. Additional or Substitute Bond

If at any time the Owner for justifiable cause shall become dissatisfied with any surety or sureties, then upon the Performance or Statutory Bonds, the Contractor shall within five (5) days after notice from the Owner to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the Owner.

31. Assignments

The Contractor shall not assign the whole or any part of this contractor or any moneys due or to become due hereunder without written consent of the Owner. In case the Contractor assigns all or any part of any monies due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this contract.

32. Mutual Responsibility of Contractors

If, through acts of neglect on the part of the Contractor, any other contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

33. Separate Contract

The Contractor shall coordinate his operations with those of other contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including his subcontractors, shall keep informed of the progress and the detail work of other Contractors and shall notify the Engineer immediately of lack of progress or defective workmanship on the part of other Contractors. Failure of a Contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

34. Subcontracting

- a. The Contractor may utilize the services of specialty subcontractors on those parts of the work that, under normal contracting practices, is performed by specialty subcontractors.
- b. The Contractor shall not award any work to any subcontractor without prior written approval of the Owner. Approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the Owner may require.

- c. The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions or persons directly employed by him.
- d. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provisions of the contract documents.
- e. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

35. Engineer's Authority

- a. The Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected in any manner or to any extent by such questions.
- b. The Engineer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work that may arise between the Contractor under this contract and other contractors performing work for the Owner shall be adjusted and determined by the Engineer. Any work performed on areas which have been identified as obscure or in dispute but for which a determination has not been made by the Engineer, shall be at the sole risk of the Contractor.

36. Use of Premises and Removal of Debris

The Contractor expressly undertakes at his own expense:

- a. to take every precaution against injuries to persons or damage to property;
- b. to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors;

- c. to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- d. to frequently clean up all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- e. before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat orderly condition;
- f. to effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the Engineer, not to cut or otherwise alter the work of any other Contractor.

37. Quantities of Estimate

Wherever the estimated quantities of work to be done and materials to be furnished under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the Owner to complete the work contemplated by this contract, and such increase or diminution shall in no way vitiate this contract, nor shall any such increase or diminution give cause for claims or liability for damages.

38. Lands and Rights-of-Way

Prior to the start of construction, the Owner shall obtain all lands and rights-of-way necessary for the carrying out and completion of work to be performed under this contract.

39. General Guaranty

Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the Owner, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. The Owner will give notice of observed defects with reasonable promptness.

40. Conflicts, Measurements and Discrepancies

- a. Before undertaking each part of the work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown

thereon and all applicable field measurements. The Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from the Engineer before proceeding with any work affected thereby; however, the Contractor shall not be liable to the Owner or Engineer for failure to report any conflict, error or discrepancy in the Contract Documents, unless the Contractor had actual knowledge thereof or should reasonably have known thereof.

- b. Any work performed which is governed by conflicting details, dimensions, or specifications and is performed without clarification by the Engineer shall be at the sole risk of the Contractor.
- c. No extra charge or compensation in excess of actual quantities required will be allowed because of differences between actual dimensions and the dimensions shown on the drawings.

41. Notice and Service Thereof

Any notice to any Contractor from the Owner relative to any part of this contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said Contractor at his last given address, or delivered in person to said Contractor or his authorized representative on the work.

42. Provisions Required by Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If, through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

43. Protection of Lives and Health

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and health regulations described in Chapter XIII, Bureau of Labor Standards, Department of Labor, Safety and Health Regulations for Construction, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Owner may determine to be reasonably necessary.

44. Subcontracts

The Contractor will insert in any subcontracts, any Federal Labor Standards Provisions which may be contained herein and such other clauses as the Owner and the Department of

Housing and Urban Development may, by instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

45. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, disability, age or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, age or national origin. 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). The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, disability, age or national origin.
- c. The Contractor will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or worker's representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department of Housing and Urban Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be

terminated or suspended in whole or in part and the Contractor may be declared ineligible for further CITY contracts or Federally-assisted construction contracts, in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 or September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of paragraph (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department of Housing and Urban Development may direct as means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department of Housing and Urban Development, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

46. Prohibited Interests

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

47. Use and Occupancy Prior to Acceptance by Owner

The Contractor agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the Owner, provided the Owner:

- a. Secures written consent of the Contractor except in the event, in the opinion of the Engineer, the Contractor is chargeable with unwarranted delay in final clean-up of punch list items or other contract requirements, and
- b. Secures endorsement from the insurance carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction, or,

- c. When the project consists of more than one building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit to complete construction. Consent of the surety must also be obtained.

48. Photographs of the Project

If required by the Owner, the Contractor shall furnish photographs of the project, in the quantities and as described in the Special Provisions.

49. Suspension of Work

Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay with such determination to be set forth in writing.

50. Labor Provisions

a. Minimum Wages

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate of any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the Owner for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated 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 Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

b. Underpayment of Wages or Salaries

In case of underpayment of wages by the Contractor or by any subcontractors to laborers or mechanics employed by the Contractor or subcontractor upon the work covered by this Contract, the Owner in addition to such other rights as may be afforded it under this Contractor, shall withhold from the Contractor, out of any payments due the Contractor, so much thereof as the Owner may consider necessary to pay such laborers or mechanics the full amount of wages required by this Contract. The amount so withheld may be disbursed by the Owner, for and on account of the Contractor or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf prescribed in the applicable wage determination.

c. Anticipated Costs of Fringe Benefits

If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing fringe benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is part of this Contract; provided, however, 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 asset for the meeting of obligations under the plan or program. A copy of findings made by the Secretary of Labor in respect to fringe benefits being provided by the Contractor must be submitted to the Owner with the first payroll filed by the Contractor subsequent to receipt of the findings.

d. Overtime Compensation Required by Contract Works Hours and Safety Standards Act (76 Stat. 357-360: Title 40 U.S.C., Sections 327-332).

(1) 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, including watchmen and guards, which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week.

(2) Violation/Liability for Unpaid Wages Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1), the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his 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 employed in violations of the clause set forth in paragraph (1), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (1).

(3) Withholding for Liquidated Damages. The Owner shall withhold or cause to be withheld, from any monies payment on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided the clause set forth in paragraph (2).

(4) Subcontracts. The Contractor shall insert in any subcontracts the clauses set forth in paragraphs (1), (2), and (3) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontractors which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

e. Employment of Apprentices/Trainees

(1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his 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 in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (2) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rates determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the areas of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

(2) Trainees. Except as provided in 29 CFR 5.15, 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, evidence by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprentice and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not

less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training 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.

- (3) 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.

f. Employment of Certain Persons Prohibited

No person under the age of sixteen or no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this Contract.

g. Regulations Pursuant to So-Called "Anti-Kickback Act"

The Contractor shall comply with the applicable regulations (a copy of which is attached and herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 862; Title 18 U.S.C., Section 874; and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except as said Secretary of labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirement thereof.

h. Employment of Laborers or Mechanics Not Listed in Aforesaid Wage Determination Decision

Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract will be classified or reclassified comfortably to the wage determination by the Owner, and a report of the action taken shall be submitted by the Owner, through the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor. In the

event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the Owner shall be referred, through the Secretary of Housing and Urban Development, to the Secretary of Labor for final determination.

i. Fringe Benefits Not Expressed as Hourly Wages Rates

The Owner shall require, 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 wage rate and the Contractor is obligated to pay cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the questions, accompanied by the recommendation of the Owner, shall be referred, through the Secretary of Housing and Urban Development, to the Secretary of Labor for determination.

j. Posting Wage Determination Decisions and Authorized Wage Deductions

The applicable wage poster of the Secretary of Labor, United States Department of Labor, and the applicable wage determination decisions of said Secretary of Labor with respect to the various classification of laborers and mechanics employed and to be employed upon the work covered by this Contract, and a statement showing all deductions, if any, in accordance with the provisions of this Contract, to be made from wages actually earned by persons so employed or to be employed in such classifications, shall be posted at appropriate conspicuous points at the site of the work.

k. Complaints, Proceedings, or Testimony by Employees

No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contractor to his employer.

l. Claims and Disputes Pertaining to Wages

Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the work covered by this Contractor shall be promptly reported by the Contractor in writing to the Owner for referral by the latter through the Secretary of Housing and Urban Development to the Secretary of Labor, United States Department of Labor, whose decision shall be final with respect thereto.

m. Questions Concerning Certain Federal Statutes and Regulations

All questions arising under this Contract which relate to the application or interpretation of (a) the aforesaid Anti-Kickback Act, (b) the Contract Work Hours and Safety Standards Act, (c) the aforesaid Davis-Bacon Act, (d) the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to said Acts, or (e) the labor standards provisions of any other pertinent Federal statute, shall be referred, through the Owner and the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this Contract.

n. Payrolls and Basic Payroll Records of Contractor and Subcontractors

The Contractor and each subcontractor shall prepare his payroll on forms satisfactory to and in accordance with instructions to be furnished by the Owner. The Contractor shall submit weekly to the Local Public Agency or Public Body two certified copies of all payrolls of the Contractor and of the subcontractors, it being understood that the Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of three (3) years thereafter. Such payroll and basic payroll records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions or costs anticipated of the types described in Section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations, that the wages of any laborer or mechanic includes 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 or subcontractor 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. The Contractor and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this Contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the Owner, and the United States Department of Labor. Such representative shall be permitted to interview employees of the Contractor or of any subcontractor during working hours on the job.

o. Specific Coverage of Certain Types of Work by Employees

The transporting of materials and supplies to or from the site of the Project to which this Contract pertains by the employees of the Contractor or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the Project to which this Contract pertains by persons employed by the Contractor or by any subcontractor, shall, for the purposes of this Contract, and without limiting the generality of the foregoing provisions of this Contract, be deemed to be work to which these, Federal Labor Standards Provisions are applicable.

p. Provisions to be Included in Certain Subcontracts

The Contractor shall include or cause to be included in each subcontract covering any of the work covered by this Contract, provisions which are consistent with any Labor Standards Provisions, included herein and also a clause requiring the subcontractors to include such provisions in any lower tier subcontracts which they may enter into, together with a clause requiring such insertion in any further subcontracts that may in turn be made.

q. Ineligible Subcontractors

The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the Owner's prior written approval of the subcontractor. The Owner will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by the Secretary of Labor, United States Department of labor or the Secretary of Housing and Urban Development, to receive an award of such subcontract.

(1) Breach of Foregoing Federal Labor Standards Provisions

In addition to the clauses for termination of this Contract as herein elsewhere set forth, the Owner reserves the right to terminate this Contract if the Contractor or any subcontractor whose subcontract covers any of the work covered by this Contract shall breach any of these Federal Labor Standards Provisions. A breach of these Federal Labor Standards Provisions may also be grounds for debarment as provided by the applicable regulations issued by the Secretary of Labor, United States Department of Labor.

r. Employment Practices

The Contractor shall, to the greatest extent practicable, follow hiring and employment practices for work on the project that will provide new job opportunities for the unemployed and underemployed. This clause shall be inserted in each construction subcontract.

s. Contract Termination; Debarment

A breach of Section 45 and the Federal Labor Standards Provisions may be grounds for termination of the Contractor, and for debarment as provided in 29 CFR 5.6.

51. Sales Tax Exemption

Pursuant to Oklahoma Statutes, Title 68, 1356(10), Contractors and Subcontractors shall be exempted from the tax levied on the sale of tangible personal property or services necessary for the completion of this construction contract. Any Contractor or Subcontractor making purchases for this contract on behalf of the City of Moore shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor, that the purchases are made for and on behalf of the City of Moore.

Contractors and Subcontractors shall request a written Sales Tax Exemption by contacting the City Clerk or Purchasing Agent of the City of Moore, at 301 N Broadway, Moore, Oklahoma, 73160 who will issue such exemption on an individual project basis. It shall be the Contractor's and Subcontractor's responsibility to secure the Sales Tax Exemption and failure to do so will not lessen their liability for payment of the sales tax.

Until the City of Moore accepts the improvements, purchases for carrying out the contract for construction of this project shall be exempt from sales taxes as provided in the cited statute. Two Tax Commission interpretations of the Oklahoma statutes Title 68 Sec 1356(10) are listed below to avoid contention among the City of Moore, its contractors, and the Tax Commission.

"Exemptions apply to materials incorporated into the project, but not to concrete forms nor to other tools"

"The same reasoning precludes exemptions being applied to rental items"

The Contractor shall certify that purchases are made for or are on behalf of the City of Moore. Persons who make wrongful or erroneous certifications) shall be guilty of a misdemeanor and shall be punished as provided in the statutes.

52. Special Equal Opportunity Provisions

- a. Activities and Contracts Not Subject to Executive Order 11246, as Amended.

(Applicable to Federally assisted construction contracts and related subcontracts under \$10,000.)

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The Con-

tractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. 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 of training, including apprenticeship.

(2) The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this nondiscrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) Contractors shall incorporate foregoing requirements in all subcontracts.

b. Contracts Subject to Executive Order 11246, as Amended.

(Applicable to Federally assisted construction contracts and related subcontracts exceeding \$10,000.)

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor shall send to each labor union or representatives of works with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
 - (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract, or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order 11246, of September 24, 1965, or by rule, regulation, order of the Secretary of Labor, or as otherwise provided by law.
 - (7) The Contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.
- c. "Section 3 Compliance in the Provision of Training, Employment and Business Opportunities.

During the performance of this contract, the contractor agrees as follows:

- (1) The Contractor agrees to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701 u.), as amended, the HUD regulations issued pursuant thereto at 24 CFR Part 135, and any applicable rules and orders of HUD issued thereunder.
- (2) The "Section 3 clause" set forth in 24 CFR 135.20(b) shall form part of this contract, as set forth in Paragraph 1 of the General Conditions, "Contract and Contract Documents".

- (3) Contractor shall incorporate the "Section 3 clause" shown below and the foregoing requirements in all subcontracts.

Section 3 Clause as Set Forth in CFR 135.20(b)

- i. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that are located in, or owned in substantial part by persons residing in the area of the project.
- ii. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135.20, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
- iii. The Contractor will send to each labor organization or representative of workers with whom he has a collective bargaining agreement or other contract or understanding. If any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iv. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135.20. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135.20 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- v. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135.20, and all applicable rules and regulations of the Department

issued thereunder prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance. Failure to fulfill these requirements shall subject the applicant or recipient, its contractor and subcontractors, its successors, and assigns to these sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.20.

53. Certification of Compliance with Air and Water Acts

(Applicable to Federally assisted construction contracts and related subcontracts exceeding \$100,000.)

Compliance with Air and Water Acts

During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et. seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et. seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 14, as amended.

In addition to the foregoing instruments, all nonexempt contractors and subcontractors shall furnish to the Owner, the following:

- a. A stipulation by the contractor or subcontractor, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- b. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to inspection, monitoring, entry reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- c. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility, utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- d. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in Paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

54. Employment of Handicapped Persons

Where possible, employment of handicapped persons is encouraged.

55. Employment of Female Persons

Where possible, employment of female persons is encouraged.

56. Employment of Veterans

The contractor agrees to provide certification that special consideration with existing applicable collective bargaining agreements and practices, shall be given to the employment on the project of qualified disabled veterans as defined in 38 USC 2011(1), and to qualified Vietnam-era veterans, as defined in 38 USC 2011(2)(A).

WORK ORDER

TO: _____

From: City of Moore

Re: **Ward 1 Residential Street Improvements: Timber Creek Way and Kelsi Drive**

Date: _____

You are hereby notified that all contract documents have been entered and accepted in relation to the contract entered into on the ____ day of _____, 20, by and between the City of Moore and _____ that work may now be commenced in accordance with said contract.

Authorized by:

Effective Date: _____

**AFFIDAVIT FOR PAYMENTS FOR \$25,000 OR MORE
CITY OF MOORE, OKLAHOMA**

STATE OF OKLAHOMA }
COUNTY OF CLEVELAND }

The undersigned (architect, contractor, supplier or engineer), of lawful age, being first duly sworn, on oath says that this invoice or claim is true and correct. Affiant further states that the (work, services or materials) as shown by this invoice or claim have been (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the State of Oklahoma, any county or local subdivision of the state, of money or any other thing of value to obtain payment.

(Contractor)

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

My Commission Expires:

Note: Copy of this Affidavit must be attached to any invoice submitted by an Architect, Contractor, Engineer or Supplier of material for \$25,000 or more.

PAYMENT CERTIFICATE

TO: City of Moore

Re: **Ward 1 Residential Street Improvements: Timber Creek Way and Kelsi Drive**

I, _____ of
Name of Authorized Agent and Designation

_____ do hereby affirm that all claims and Company obligations incurred by me or in my behalf in connection with the performance of the above mentioned project have been fully paid and settled.

Authorized Representative

Name of Company

**STATE OF OKLAHOMA }
COUNTY OF CLEVELAND }**

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this ___ day of _____, 20__, personally appeared _____, (name) to me known to be the identical person who signed the name of _____, (corporation/proprietorship/authorized agent name) an Oklahoma corporation, to the within and foregoing instrument as its _____, (president/owner) and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of said Corporation/Company for uses and purposes therein set forth.

Witness my hand and seal the day and year last above written.

Notary Public

My Commission Expires: _____

CONTRACTOR’S RELEASE TO CITY

TO: City of Moore

Re: **Ward 1 Residential Street Improvements: Timber Creek Way and Kelsi Drive**

This is to certify that _____, by acceptance of this final payment, hereby releases the owner, City of Moore, from all claims and all liabilities to the City of Moore for all things done or furnished in connection with work on this project and further releases said City of Moore from liabilities arising from any act of the owner or his agent arising in connection with this project. This release in no way operates to release the contractor or his Surety from any obligations under this contract or the bond tendered pursuant thereto.

Name of Corporation

Authorized Agent

**STATE OF OKLAHOMA }
COUNTY OF CLEVELAND }**

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this ___ day of _____, 20__, personally appeared _____, (name) to me known to be the identical person who signed the name of _____, (business/proprietorship/authorized agent name), an Oklahoma corporation/proprietorship, to the within and foregoing instrument as its _____ (president/owner), and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of said Corporation/ Company for uses and purposes therein set forth.

Witness my hand and seal the day and year last above written.

Notary Public

My Commission Expires: _____

SUBCONTRACTOR'S

WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned subcontractor or material/equipment supplier, in consideration of the final payment in the amount of \$_____, hereby waives and releases its lien, and right to claim a lien for labor, services, or materials furnished to _____(contractor on the job of **Ward 1 Residential Street Improvements: Timber Creek Way and Kelsi Drive** for the City of Moore, Cleveland County, Oklahoma (Owner).

The said subcontractor or material/equipment supplier has been fully satisfied and paid any and all claims for labor and materials/equipment insofar as they pertain to the "Project" in question.

In further consideration of the payment made and set forth, the undersigned certifies that all of its subcontracts or material/equipment suppliers and employees on the project have already been paid and the undersigned agrees to indemnify and hold completely harmless _____ (contractor) in the event of any claims hereafter made alleging non-payment by such subcontractors or material/equipment suppliers or employees.

Date: _____

Subcontractor/Supplier

By: _____ (Print Name)

(Signature) _____ (Title)

State of _____ County of _____

Subscribed and sworn to before me on this _____ day of _____, 20__

Notary Public My commissions expire: _____

My commission number: _____