

CONTRACT



BETWEEN THE CITY OF MOORE, OKLAHOMA AND CIMARRON CONSTRUCTION FOR ON-DEMAND CONSTRUCTION SERVICES

Preamble

This Contract is entered into between the City of Moore, Oklahoma (“the City”), a municipality, with principal offices at 301 N. Broadway, Moore, Oklahoma 73160 and Cimarron Construction with principal offices at 7409 NW 85th St. Oklahoma City, OK 73132.

WHEREAS, the City requires the services of Cimarron Construction (“the Contractor”) as an on-demand public works construction contractor to perform construction services as described herein;

WHEREAS, the Contractor has agreed to provide said services, to the extent outlined herein;

NOW THEREFORE, in consideration of the premises and conditions set forth below the party’s contract;

Section 1: Term and Termination

- 1) The term of the contract shall be from November 16, 2015 through November 16, 2016;
- 2) The term may be extended in increments of one year for up to five years from the initial Contract date upon the written agreement of the City and the Contractor;
- 3) The Contract may be terminated in whole or in part as follows:
 - (a) By the City of Moore, if a Contractor fails to comply with the terms and conditions of a Federal award;
 - (b) Either party may terminate without cause after ten (10) days written notice to the other party of the intention to terminate this Agreement, or at any time by mutual agreement of the parties. In the event of termination, Contractor shall be paid for the work performed up to the date of termination. The City shall be entitled to all contractor work up to the date of termination;
 - (c) By the City of Moore with the consent of the Contractor, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
 - (d) By the Contractor upon sending to the City of Moore written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the City of Moore or HUD determines in the case of a partial termination that the reduced or modified portion of the contract will not comply with needs of the City of Moore as it relates to the Federal award or sub-award and it will not accomplish the purposes for which the Federal award was made, the City of Moore may terminate the contract in its entirety.
 - (e) When a Federal award is terminated or partially terminated, the City of Moore and the Contractor remain responsible for compliance with the requirements in 2 CFR 200.343 Closeout and 2 CFR 200.344 Post-closeout adjustments and continuing responsibilities.

References: (2 CFR 200.339; 78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43309, July 22, 2015)

- 4) The Contract may be amended as provided for in Section 8: Modification or Amendment

Section 2: Scope of Services

GENERAL

1) The work will consist of a selected on-demand construction services contractor building various projects or construction tasks though out the City of Moore as work orders are issued by the Assistant City Manager or his designee. These municipal projects including but not limited to: various on-demand construction services such as roadway repairs, rehabilitation, reconstruction or new construction; sidewalk repair, reconstruction or new construction; multi-modal trail repair, reconstruction or new construction; storm water drainage repairs, reconstruction or new construction; traffic signal repair, rehabilitation and reconstruction; emergency construction services that would include snow/ice removal, storm damage debris collection and removal and emergency traffic control; and any other special projects as deemed necessary by the City of Moore or The Moore Public Works Authority (hereinafter referred to as the City of Moore). Some projects will be federally funded by the Department of Housing and Urban Development (HUD) and will adhere to federal regulations. When assigned a construction project or construction task, the contractor or contractors will be required to provide cost estimates on these specific projects and cooperate with the city in meeting these estimates. The Contractor will provide all necessary construction crews with adequate staffing to complete assigned projects.

2) The Contractor shall provide all equipment to complete the assigned construction projects or construction tasks. This equipment shall all be in good operating condition. The contractor shall also provide its own tools, fuel, safety equipment, communications equipment, and manually operated tools, local or mobile field office, and office equipment.

3) All work and materials will comply with the current version of the City of Oklahoma City Standard Specification for the Construction of Public Improvements with all amendments and revisions

included (hereafter referred to as "standard specifications") and the City of Oklahoma City Construction Standard Details (hereafter referred to as "standard details"). When these standard specifications and standard details do not address certain construction tasks or certain required construction materials, then the Oklahoma Department of Transportation Standard Specifications for Highway Construction will govern. The City of Moore also reserves the right to modify or deviate from the construction specifications if necessary to best fit the needs of The City of Moore.

ROADWAY ON-DEMAND CONSTRUCTION SERVICES

When authorized by a specific work order issued by the City of Moore, the on-demand construction services contractor shall provide all equipment, fuel, tools, barricades, materials, necessary appurtenances and labor to repair, rehabilitate, reconstruct or construct new roadways, sidewalks or multi-modal trails. Work orders will be developed by the city and the scope of work negotiated with the selected on-demand construction services contractor. The contractor shall be paid for this work at the unit prices established with this proposal. With Pre-approval by the City of Moore; the contractor may procure specialized contractors, equipment, supplies or emergency equipment on the City of Moore's behalf to complete this work, the contractor shall be allowed an eight percent markup on the actual costs with acceptable documentation being provided to the city.

STORM WATER AND DRAINAGE CONSTRUCTION SERVICES

When authorized by a specific work order issued by the City of Moore, the on-demand construction services contractor shall provide all equipment, fuel, tools, barricades, materials, necessary appurtenances and labor to repair, rehabilitate, reconstruct or construct new storm water structures, collection systems, ditches or channels. Work orders will be developed by the city and the scope of work negotiated with the selected on-demand construction services contractor. The contractor shall be paid for this work at the unit prices established with this proposal. With Pre-approval by the City of Moore, the contractor may procure specialized contractors, equipment, supplies, or emergency equipment on the City of Moore's behalf to complete this work, the contractor shall be allowed an eight percent markup on the actual costs with acceptable documentation being provided to the city.

Storm Water and Drainage Construction

Storm water and drainage construction consists of labor, equipment, material and all other essentials required to repair, rehabilitate, remove and replace, or to construct new with the established unit cost pay items of this proposal. Work generally will include storm water curb inlets, area drains, grated street inlets, manholes, piping systems, paved drainage channels and drainage ditch repairs in established neighborhoods throughout the City of Moore. Occasionally, work will include an improvements along or adjacent to a principal arterial street. Additional tasks shall include:

- Full time project manager who will be in the field daily that works closely with the city staff.
- Weekly progress meetings with city staff, project inspector and construction crewmembers.
- Subject to weekly safety meetings and safety inspections.
- Subject to daily inspection of all safety barricades
- Shall provide all compliance with Federal Emergency Management Agency (FEMA), Oklahoma Department of Transportation (ODOT), Oklahoma Department of Environmental Quality (ODEQ), Oklahoma Water Resource Board (OWRB), U.S. Army Corps of Engineers (USACE), or Oklahoma Department of Emergency Management (OEM) regulations as required.
- Attend meetings with the City, Federal Emergency Management Agency (FEMA), Oklahoma Department of Transportation (ODOT), Oklahoma Department of Environmental Quality (ODEQ), Oklahoma Water Resource Board (OWRB), U.S. Army Corps of Engineers (USACE), or Oklahoma Department of Emergency Management (OEM) and other agencies as necessary
- Provide a bond for the protection of the City of Moore against claims during construction.

SPECIALTY ITEMS

1) The disposal of industrial types of hazardous wastes that would not normally be found in a household waste stream will be paid for as an emergency service. If encountered on public right of ways or in residential areas, hazardous wastes shall be properly disposed of by a licensed company and the contractor shall provide documentation of proper disposal to the City of Moore.

ADDITIONAL SERVICES

1) There may be additional items or services that are necessary or incidental to complete projects that the Contractor has underway for the City of Moore or the Moore Public Works Authority, that have not been named in the bid items. The Contractor shall use its best efforts to obtain any professional services, specialty items, and best quality materials, (that meet the approved construction specification or standard details), at the best price available that fit the budget requirements set forth by the City of Moore. The City of Moore will also consider value engineering proposals, and other cost saving methods as approved by 49 CFR Sec 18:36 subpart 7 to provide maximum value to the City of Moore.

2) The Contractor shall obtain prior authorization before purchasing any additional materials or services not named in the unit price bid items.

3) The contractor must provide documentation of the quotes for these materials and the final costs of these materials, services or supplies monthly for payment by the City of Moore. These costs shall be billed at their actual cost to the City of Moore with no more than an eight percent markup to cover the contractors handling costs. The City of Moore may also elect to furnish materials from other bidders or sources such as county or state contracts.

Change Orders and Claims

The City of Moore does not guarantee any specific work or any specific amount of work in relation to any part of this contract. Claims will be processed to cover work as work orders are issued by the Assistant City Manager or his designee and completed during the contract period. All change

orders for additional payments or changes in the work such as: changes in materials, project design, or extra quantities, must be approved by the City before proceeding.

Section 3: General Terms and Conditions

Laws and Regulations

The Community Development Block Grant – Disaster Recovery (CDBG-DR) allocation to the City of Moore is governed by the following laws and regulations:

- (a) The Housing and Community Development Act of 1974;
- (b) Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42U.S.C.5155), as amended;
- (c) Section 18 of the Small Business Act, as amended (14AU.S.C.647) 44 CFR 206.191 Duplication of Benefit
- (d) Duplication of Benefits Federal Register, Vol.76, No.221, November 16, 2011 (76 FR 71060) Public Law 113-2:
- (e) Disaster Relief Appropriations Act, 2013 (at HR 152-34)
- (f) The HUD Federal Register Notice at 78 FR 14329 published March 5, 2013
- (g) HUD Federal Register Notice at 78 FR 23578 published April19, 2013
- (h) HUD Federal Register Notice at78 FR 76154 published December 16, 2013
- (i) The applicable laws of the State of Oklahoma; and
- (j) By the laws and regulations promulgated by the City for the CDBG-DR program.
- (k) In addition to the citations noted, the CDBG-DR allocation is also subject to “cross-cutting” Federal requirements referenced herein and contained in 2 CFR 200 Sub-part F – Appendix

Federal Changes

Contractor shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation to those listed directly or by reference in this Contract between the City of Moore Department of Capital Planning and Resiliency and the Contractor. The

City of Moore shall provide the contractor direction as to the applicable Federal regulations, policies, and procedures that apply to the contract, and any new directives or changes to existing directives as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to comply shall constitute a material breach of this contract. Reference: (49 CFR Part 18)

Assignability

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

Access to Records

The Contractor agrees that the U.S. Department of Housing and Urban Development ("HUD"), the Inspectors General, the Comptroller General of the United States, the City Moore, or any of their authorized representatives, have the right of access to any documents, papers, or other records of the Contractor which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. Reference: (2 CFR 200.336)

Record Retention Requirements

The Contractor agrees financial records, supporting documents, statistical records, and all other Contractor records pertinent to the HUD CDBG-DR award shall be retained for a period of three years from the date of submission of the final expenditure report. HUD and the City may not impose any other record retention requirements upon the Contractor. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the Contractor is notified in writing by HUD, the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or City of Moore to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition.

(d) When records are transferred to or maintained by the HUD or the City of Moore, the 3-year retention requirement is not applicable to the Contractor. Reference: (2 CFR 200.333)

Remedies for Noncompliance

If a Contractor fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, HUD or the City of Moore may impose additional conditions, as described in 2 CFR 200.207 Specific Conditions. If HUD or the City of Moore determines that noncompliance cannot be remedied by imposing additional conditions, HUD or the City of Moore may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the Contractor or more severe enforcement action by HUD or City of Moore.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and HUD regulations, or in the case of a City of Moore, recommend such a proceeding be initiated by HUD.

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

Reference: (2 CFR 200.338)

Breaches and Dispute Resolution

- (a) Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City's Department of Capital Planning and Resiliency. This decision shall be final and conclusive unless within [ten (10)] calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.
- (b) Performance During Dispute - Unless otherwise directed by to the City of Moore Department of Capital Planning and Resiliency, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- (c) Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- (d) Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration in the City of Moore Department of Capital Planning and Resiliency if the parties mutually agree, or in a court of competent jurisdiction in Cleveland County, Oklahoma.
- (e) Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a

limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Moore or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing. Reference: 49 CFR Part 18

Termination

(a) The Contract may be terminated in whole or in part as follows:

(1) By the City of Moore, if a Contractor fails to comply with the terms and conditions of a Federal award;

(2) Either party may terminate without cause after ten (10) days written notice to the other party of the intention to terminate this Agreement, or at any time by mutual agreement of the parties. In the event of termination, Contractor shall be paid for the work performed up to the date of termination. The City shall be entitled to all contractor work up to the date of termination; (3) By the City of Moore with the consent of the Contractor, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(4) By the Contractor upon sending the City of Moore or HUD written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if HUD or City of Moore determines in the case of partial termination that the reduced or modified portion of the Contract will not accomplish the purposes for which the Federal award was made, HUD or City of Moore may terminate the Contract in its entirety.

(b) When a Federal award is terminated or partially terminated, the City of Moore and the Contractor remain responsible for compliance with the requirements in 2 CFR 200.343 Closeout and 2 CFR 200.344 Post-closeout adjustments and continuing responsibilities. References: (2 CFR 200.339; 78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43309, July 22, 2015)

Equal Opportunity

The following equal employment opportunity requirements apply to the Contract:

- a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.
- b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.
- c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29

C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.

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

Civil Rights

- 1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements HUD may issue.
- 2) The Contractor agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
- 3) The Contractor agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

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

Conflict of Interest

Any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City of Moore, or of any of the City's subsidiaries, who exercises or have exercised any

functions or responsibilities with respect to CDBG activities assisted, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year after such decision making responsibilities have ended. Reference: 2 CFR 200.112

Copyrights

HUD and the City of Moore reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: The copyright in any work developed under the Contract, and to any rights of copyright to which a Contractor or Sub-contractor purchases ownership with grant support. Reference: 24 CFR Subtitle A. 85.34 Copyrights

Lobbying

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City of Moore.

References: (31 U.S.C. 1352as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65; 49 CFR Part 19, 49 CFR Part 20)

Environmental Requirements

Clean Air

1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 etseq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification and the appropriate EPA Regional Office.

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

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

Clean Water

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

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

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

Energy Conservation

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

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

Recycled Products

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

procurement of the items designated in Subpart B of 40 CFR Part 247.

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

Environmental Conditions Discovered During Construction

- 1) The Contractor agrees to cease work and immediately notify the City should a previously unknown environmental condition be discovered in the course of construction;
- 2) The Contractor understands that the discovery of an environmental condition requires the City to revise the Environmental Review Record (ERR) and that work on the portion of the project designated by the City must cease until the ERR is revised.
- 3) The City will issue a new Notice to Proceed once the Environmental Review has been updated or the environmental condition has been cleared

References: 24 CFR Part 58.47

Section 504 and Americans with Disabilities Act

The Contractor agrees and understands the requirements of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 and requirement that: sidewalks, pedestrian overpasses, underpasses, and ramps constructed with Federal financial assistance must be accessible.

References: 36 CFR Part 1190 Minimum Guidelines and Requirements for Accessible Design

Section 4: Bonds, Insurance & Licenses

Bond Requirements

No surety will be accepted by the City from a Contractor that is now in default or delinquent on any bond or has an interest in any litigation against the City. All bonds shall be executed by surety companies licensed to do business in the State of Oklahoma and acceptable to the Council. Each bond shall be executed by the Contractor and the Surety.

The City requires the following bonds:

Maintenance Bond:

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

Performance Bond:

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

Statutory Bond:

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

Proof of Bonds shall be delivered to the City of Moore prior to the issuance of any Work Order.

Insurance Requirements

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

Commercial Liability	\$1,000,000 Each Occurrence
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	\$1,000,000 General Aggregate
Must include coverage for blanket contractual liability for the obligations assumed under contract	
Comprehensive Automobile Liability	\$1,000,000 Combined Single Limit Each Occurrence
Coverage must extend to all owned, non-owned, leased, hired or borrowed vehicles and must include coverage for blanket contractual liability for the obligations assumed under contract	
Workers' Compensation	Statutory Limits where Services are to be performed
Must include coverage for Longshoremen's and Harbor Workers' Compensation, if applicable, and coverage for Federal Employers' Liability Act, if applicable	
Employer's Liability	\$1,000,000 Each Occurrence
	\$1,000,000 Disease per Employee
An Umbrella liability policy, which follows form, may be used to obtain the aforementioned limits	
Professional Liability (if applicable)	\$1,000,000 Each Claim
	\$2,000,000 General Aggregate

The City of Moore shall be furnished with a certificate of insurance, which shall provide that such insurance shall not be changed or canceled, without ten days prior written notice to the City of Moore. THE POLICY SHALL LIST THE CITY OF MOORE AS CO-INSURED OR ADDITIONAL INSURED.

Certificates of Insurance shall be delivered to the City of Moore prior to the issuance of any Work Order.

License Requirements

The Contractor assumes all responsibility for insuring the Contractor and all sub-contractors maintain all applicable federal, state or local Licenses necessary to perform the work required.

Section 5: Work Orders, Invoices, and Payment

The contractor will provide a scope of services, budget, and timeline for each project.

Once the scope of services, budget, and timeline for the project has been negotiated a work order will be prepared.

Work Orders

- 1) The Contractor will receive a Work Order from the City which will describe the scope of services specific to the construction project or task;
 - a. The Contractor will submit to the City a complete line item budget based on the Unit Prices in Appendix A;
 - b. The Contractor will submit to the City a schedule for completion;
- 2) The City will determine if the costs and schedule are reasonable and prudent;
- 3) The City will establish the start date for the project and provide the Contractor with a signed and dated Notice to Proceed;
 - a. Any work undertaken prior to receiving a signed and dated Notice to Proceed from the City shall be at the Contractor's complete expense and risk.
- 4) The Work Order number shall be identified and included in all Invoices.
- 5) A work order will not be issued until the Department of Capital Planning and Resiliency has received proof of insurance and bonds.

Invoices

The City agrees to pay the Contractor for services rendered on the following schedule, terms and conditions:

- 1) The Contractor agrees that the labor and materials costs for on-demand construction services shall be defined as the Unit Prices contained in [Appendix A](#);
- 2) The Contractor's sub-contractors are contained in [Appendix B](#)

- a) The Contractor may amend the sub-contractor list in accordance with [Section 8: Modification or Amendment](#)
- 3) The Contractor agrees to meet the Minority Owned, Women Owned or Section 3 business reporting requirements contained in [Appendix D](#) at the time of the Invoice;
- 4) The Contractor shall be permitted to invoice the City once each month during the contract period for reimbursement of Unit Costs.
- 5) For an Invoice to be considered "properly submitted":
 - a) The Invoice must be identified by Work Order Number, be complete, accurate, have all required documentation; be signed and dated; and
 - b) All Davis-Bacon, Section 3 and Minority Owned, Women Owned or Section 3 business reporting requirements must be current, complete, compliant and signed and dated.
- 6) Monthly invoices must be submitted by the 1st of each month.

Weekly Reports

- 1) The Contractor agrees to meet all of the Federal Labor Standard Provisions contained in [Appendix C](#); and
 - a) To submit Davis Bacon Payrolls weekly to the Compliance Specialist
- 2) The Contractor agrees to meet the Section 3 requirements as provided for in the [City's Section 3 Plan](#); and
 - b) To submit Section 3 reports weekly to the Compliance Specialist

Payments

- 1) The City agrees to make full payment of any "properly submitted" invoice within sixty days of the invoice date.

- 2) Unless otherwise stipulated all payments will be made by electronic funds transfer from the City to the Contractor.
- 3) All Davis-Bacon, Section 3 and Minority Owned, Women Owned or Section 3 business reporting requirements must be current, complete, compliant and signed and dated to receive payment.

Adjustments to Rate Schedule

- 1) The Unit Prices defined in Appendix A may be adjusted once per year on the contract anniversary date.
- 2) The Contractor will propose rate adjustments to compensate for cost increases in materials, fuel, insurance etc.
 - a. These material adjustments must be documented to the full satisfaction of the City of Moore.
- 3) Labor rate adjustments or cost of living increases for labor may not exceed the U.S. Labor Department's U.S. City Average South West Region C.P.I. for the immediately preceding calendar year;
- 4) If the Contractor and the City of Moore cannot agree on the amount of rate adjustments, the Contractor or the City of Moore may elect to terminate the contract as provided for in [Section 3: Termination](#)
- 5) If the parties elect to terminate the Contract, the Contractor shall be bound to complete any projects currently under construction at the current contract rates for a term of no longer than 90 days at the discretion of the City of Moore

Section 6: Proprietary Information

The parties agree that each will hold any proprietary information learned as a result of this Contract in confidence. The parties will not, during or after the term of this Contract, disclose such proprietary information to any other person or entity for any reason whatsoever, unless required by Title 51 O.S. Section 24A.1 et. seq.; also known as the State of Oklahoma Open Records Act.

Section 7: Understanding and Authorization

This Contract shall constitute the entire understanding of the parties and any other understanding or representation of any kind shall not be binding upon either party. Each party represents that they are authorized by their organization to enter into this Contract and to bind their organization to its terms.

Section 8: Modification or Amendment

Any modification of this Contract or additional obligations assumed by either party in connection with this Contract shall be binding only if placed in writing and signed by each party or an authorized representative thereof. Should any portion of this Contract be found to be invalid it shall not be deemed to invalidate the entire Contract.

Section 9: Execution

This Contract may be executed in any number of counterparts, each of which shall be deemed an original, however all of which together shall constitute one and the same instrument.

Section 10: Notifications

All notifications concerning this Contract shall be sent to the following addresses:

To: The City of Moore at:


Grants Manager
Capital Planning and Resiliency
City of Moore
301 N. Broadway
Moore, Oklahoma 73160

To: Cimarron Construction at:

Cimarron Construction
Travis Lloyd
7409 NW 85th St.
Oklahoma City, OK 73132
405-728-1555

IN WITNESS WHEREOF, each party has caused this Contract to be executed on the date indicated below, on this, page 23 of 16 pages.

The City of Moore:



Glenn Lewis, Mayor

Date: NOV 16-2015




Brooks Mitchell, City Clerk



Randy Brink, City Attorney

Cimarron Construction



Don E. Noble, President

Date: 11/18/15

APPENDIX A: UNIT PRICES

In addition to the unit prices, the Contactor may add an additional seven percent of the work order cost as mobilization fees for each project or work order.

Drainage

<u>OKC Spec Book #</u>	<u>Pay Item #</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
403	1	Concrete Channel Liner	S.Y.	\$ 120.00
403	2	Concrete Channel Liner (Transition)	S.Y.	\$ 155.00
404	1	Concrete Class A	C.Y.	\$ 495.00
404	6	Structural Concrete (Retaining Wall)(Type I A) (2'-5' Height)	L.F.	\$ 219.00
404	7	Structural Concrete (Retaining Wall)(Type I B)(2'-5' Height)	L.F.	\$ 230.00
404	8	Structural Concrete (Retaining Wall)(Type I C)(2'-5' Height)	L.F.	\$ 224.00
404	9	Structural Concrete (Retaining Wall)(Type II A)(2'-5' Height)	L.F.	\$ 216.00
404	10	Structural Concrete (Retaining Wall)(Type II B)(2'-5' Height)	L.F.	\$ 268.00
404	11	Structural Concrete (Retaining Wall)(Type II C)(2'-5' Height)	L.F.	\$ 249.00
404	12	Structural Concrete (Retaining Wall)(Type III A)(2'-5' Height)	L.F.	\$ 195.00
404	13	Structural Concrete (Retaining Wall)(Type III B)(2'-5' Height)	L.F.	\$ 203.00
404	14	Structural Concrete (Retaining Wall)(Type III C)(2'-5' Height)	L.F.	\$ 225.00
404	15	Concrete Class AA	C.Y.	\$ 600.00
451	1	(CGMP) Storm Sewer (18 In.)	L.F.	\$ 140.00
451	2	(CGMP) Prefab End Section (18 In.)	EA.	\$ 495.00
451	5	(CGMP) Storm Sewer (24 In.)	L.F.	\$ 180.00
451	6	(CGMP) Prefab End Section (24 In.)	EA.	\$ 550.00
453	00	Reinforced Concrete Pipe (18 Inches)	L.F.	\$ 150.00
453	1	Reinforced Concrete Pipe (24 Inches)	L.F.	\$ 190.00
453	2	Reinforced Concrete Pipe (36 Inches)	L.F.	\$ 240.00
453	4	Reinforced Concrete Pipe (48 Inches)	L.F.	\$ 360.00
453	12	Reinforced Concrete Pipe 18 Inches "O" Ring	L.F.	\$ 165.00
453	13	Reinforced Concrete Pipe 24 Inches "O" Ring	L.F.	\$ 195.00
453	14	Reinforced Concrete Pipe 36 Inches "O" Ring	L.F.	\$ 250.00

453	15	Reinforced Concrete Pipe 48 Inches "O" Ring	L.F.	\$ 365.00
453	5	Reinforced Concrete Pipe 54 Inches "O" Ring	L.F.	\$ 420.00
453	6	Reinforced Concrete Pipe 60 Inches "O" Ring	L.F.	\$ 455.00
453	19	Reinforced Concrete Pipe End Section (18 Inches)	Ea.	\$ 1,950.00
453	25	Reinforced Concrete Pipe End Section (24 Inches)	Ea.	\$ 2,225.00
453	28	Reinforced Concrete Pipe End Section (48 Inches)	Ea.	\$ 4,375.00
453	33	Reinforced Concrete Pipe End Section (36 Inches)	Ea.	\$ 3,150.00
453	57	Reinforced Concrete Pipe End Section (54 Inches)	Ea.	\$ 5,275.00
453		Reinforced Concrete Pipe End Section (60 Inches)	Ea.	\$ 5,675.00
454	1	Manhole (4' Dia.)	Ea.	\$ 1,750.00
454	4	Manhole (5' Dia.)	Ea.	\$ 3,200.00
454	3	Manhole (6' Dia.)	Ea.	\$ 4,175.00
454	5	Manhole Added Depth (4' Dia.)	V.F.	\$ 250.00
454	6	Manhole Added Depth (5' Dia.)	V.F.	\$ 350.00
454	7	Manhole Added Depth (6' Dia.)	V.F.	\$ 450.00
454	34	Design 2-0 Inlet Complete in Place	Ea.	\$ 3,750.00
454	37	Design 2-1 Inlet Complete in Place	Ea.	\$ 4,200.00
454	38	Design 2-2 Inlet Complete in Place	Ea.	\$ 4,825.00
454	45	Design 2-3 Inlet Complete in Place	Ea.	\$ 5,250.00
454	72	Design 2-4 Inlet Complete in Place	Ea.	\$ 6,400.00
454	65	Design 2-5 Inlet Complete in Place	Ea.	\$ 7,150.00
454	63	Grated Street Inlet (26' Wide)	Ea.	\$ 14,750.00
454	66	Box Type Inlet (4' x 4')	Ea.	\$ 6,500.00
454	30	Junction Box (6' x 6')	C.Y.	\$ 1,350.00
454	80	Junction Box (10' x 10')	C.Y.	\$ 1,950.00
456	1	Removing Manhole	Ea.	\$ 500.00
459	1	Adjust Manhole to Grade	Ea.	\$ 750.00
460	00	Setting New Manhole Ring & Cover	Ea.	\$ 625.00
464	1	HDPE Pipe (18 In.)(SP)	L.F.	\$ 155.00
464	2	HDPE Pipe (24 In.)(SP)	L.F.	\$ 185.00
464	4	HDPE Pipe (36 In.)(SP)	L.F.	\$ 230.00
464	6	HDPE Pipe (48 In.)(SP)	L.F.	\$ 355.00
464	7	HDPE Pipe (54 In.)(SP)	L.F.	\$ 405.00
464	8	HDPE Pipe (60 In.)(SP)	L.F.	\$ 430.00
511	5	Water Service Line Short (1")	Ea.	\$ 1,335.00
511	6	Water Service Line Long (1")	Ea.	\$ 2,755.00
511	8	Water Service Line Short (1-1/2")	Ea.	\$ 1,750.00
511	9	Water Service Line Long (1 1/2")	Ea.	\$ 4,075.00
511	11	Water Service Line Short (2")	Ea.	\$ 2,700.00
511	12	Water Service Line Long (2")	Ea.	\$ 5,200.00
511	24	Water Service Line Short (5/8")	Ea.	\$ 1,250.00
511	25	Water Service Line Long (5/8")	Ea.	\$ 2,150.00
512	00	Meter Relocation (5/8")	Ea.	\$ 550.00
512	1	Meter Relocation (1")	Ea.	\$ 800.00

512	2	Meter Relocation (1 1/2")	Ea.	\$ 1,100.00
512	3	Meter Relocation (2")	Ea.	\$ 1,690.00
520	3	Valve Box Adjust to Grade	Ea.	\$ 125.00
811	15	Structure Removal (Retaining Wall)	L.F.	\$ 25.00
811	16	Structure Removal (Concrete Flume)	L.F.	\$ 15.00
811	19	Remove Exist. Headwall & Wingwall	Ea.	\$ 1,750.00
811	22	Structure Removal (Junction Box)	Ea.	\$ 2,500.00
825	00	12" (Type 1) Plain Riprap	Ton	\$ 90.00
825	1	(18" Dia.) Plain Riprap	Ton	\$ 85.00
825	2	3" (Type) Filter Blanket	Ton	\$ 80.00
826	4	Handrail (Steel)(3")	L.F.	\$ 95.00
826	8	Perforated Underdrain Pipe(6")	L.F.	\$ 25.00
826	9	Non-Perforated Underdrain Pipe(6")	L.F.	\$ 20.00

APPENDIX B: SUB-CONTRACTORS

Ex	Concrete Curb and Gutter - Joe's Construction Company, 301 North Broadway, Moore, Oklahoma 73160 Joe Jones, President (405) 555-1212 office (405) 555-2121 cell joe.jones@JCC.com
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APPENDIX C: Wage Decision

General Decision Number: OK15002201/02/2015 OK22 Superseded General Decision
Number: OK20140022 State: Oklahoma

Construction Type: Highway

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

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest
area projects & railroad construction; bascule, suspension & spandrel arch
bridges designed for commercial navigation, bridges involving marine
construction; and other major bridges).

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

Modification Number PublicationDate 01/02/2015

* SUOK2011-00904/18/2011

	Rates	Fringes	Traffic	signal
installer.....	\$17.37			
CARPENTER (Includes Form Work)...	\$13.32			
CEMENT MASON/CONCRETE FINISHER				
Canadian.....	\$12.44			
Cleveland.....	\$12.55			
Grady, Lincoln, Logan.....	\$12.47			

McClain.....\$11.93

IRONWORKER, REINFORCING.....\$13.63

IRONWORKER, STRUCTURAL.....\$14.21 LABORER

Asphalt Raker and Shoveler..\$11.31

Common or General

Canadian County.....\$10.05

Cleveland County.....\$10.62

Grady and Logan Counties...\$10.55

Lincoln County.....\$10.17

McClain County.....\$10.37

Landscape.....\$ 9.63

Pipe layer.....\$12.50

Power Tool Operator (Includes Chipping Guns and Handheld Concrete Saws)\$12.89

Traffic Control (Includes Flagger, Setting Up and Moving
Cones/Barrels).....\$11.12

POWER EQUIPMENT OPERATOR:

Asphalt Paver Screed.....\$12.44 Asphalt Paving Machine

Canadian County.....\$13.32

Cleveland County.....\$14.57

McClain County.....\$14.04

Remaining Counties.....\$14.08

Asphalt Plant.....\$14.70 Backhoe/Trackhoe

Cleveland County.....\$12.91

Remaining Counties.....\$13.64

Bobcat/Skid Loader.....\$12.71

Broom.....\$11.97

Bulldozer

McClain County.....\$13.36

Remaining Counties.....\$ 14.24

Concrete Paving Machine.....\$13.61 Concrete Saw

Cleveland County.....\$11.64

Remaining Counties.....\$11.70

Crane.....\$16.99

Distributor Truck.....\$13.81

Excavator.....\$15.10

Grader/Blade

Canadian County.....\$12.00

Cleveland County.....\$14.46

Remaining Counties.....\$ 14.98 Loader (FrontEnd)

Cleveland County.....\$12.76

Remaining Counties.....\$12.85

Mechanic.....\$15.60

Milling Machine.....\$14.93

Mixer.....\$14.43

Oiler.....\$14.06

Roller (Asphalt)

Canadian County.....\$11.67

Cleveland County.....\$12.86

McClain County.....\$12.94

Remaining Counties.....\$ 12.73 Roller (Dirt Compaction)....\$12.27

Scraper

Canadian County.....\$12.00
Cleveland County.....\$13.06
Remaining Counties.....\$13.19
Striping Machine.....\$12.56
Tractor/Box Blade.....\$16.50

Trencher.....\$13.63

TRUCKDRIVER

Dump Truck

Cleveland County.....\$12.32

Remaining Counties.....\$12.88

Flatbed Truck.....\$14.69

Lowboy/Float.....\$13.90 Off the Road Truck.....\$13.75

Pickup Truck.....\$12.48 Tandem Axle/Semi Trailer

Canadian County.....\$12.00

Cleveland County.....\$12.37

Remaining Counties.....\$13.72

Water Truck.....\$12.00

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

=====

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

WAGE DETERMINATION APPEALSPROCESS

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

- * an existing published wage determination
- * a survey underlying a wage determination

* a Wage and Hour Division letter setting forth a position on a wage determination matter

* a conformance (additional classification and rate) ruling

*

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

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

Write to: Branch of Construction Wage Determinations Wage and Hour Division

U.S. Department of Labor

200 Constitution Avenue, N.W. Washington, DC20210

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

Write to: Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue ,N.W. Washington, DC20210

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

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

Write to: Administrative Review Board

U.S. Department of Labor

200 Constitution Avenue, N.W. Washington, DC20210

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

APPENDIX D: MINORITY, WOMEN OWNED OR SECTION 3 BUSINESS REPORTING

MINORITY, WOMEN OWNED OR SECTION 3 BUSINESS REPORT				
CONTRACTOR				
Invoice Date				
		Total Amount of Invoice		\$
Name of MOB/WOB/Section 3 Business	MOB Amount	WOB Amount	Section 3 Amount	Percent of Invoice
SIGNATURE				
Printed Name and Position				
Date				

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

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

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

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. 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 Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(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 shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.