

**CONTRACT FOR CONSTRUCTION INSTALLATION OF IMPROVEMENTS
ON NORTH MAIN STREET, BETWEEN WEST MATHEW B BRADY STREET
AND WEST CAMERON STREET, TULSA, OKLAHOMA
BRADY VILLAGE TAX INCREMENT DISTRICT ONE**

THIS CONTRACT made and entered into the _____ day of _____, 2017, by and between TULSA DEVELOPMENT AUTHORITY, a Public Body Corporate, 1216 North Lansing Avenue, Suite D., Tulsa, OK 74106, hereinafter called "TDA", and MAGNUM CONSTRUCTION, INC of _____, Broken Arrow, Oklahoma, hereinafter called the "Contractor".

WITNESSETH:

WHEREAS, TDA has caused to be prepared the necessary Drawings, Specifications, and other Contract Documents for the public improvements herein described, and has invited bids for the construction thereof in accordance with the terms of this Contract, all of which is hereby designated as:

PROJECT NO.: _____

WHEREAS, the Contractor, in response to the Advertisement, has submitted to TDA, in the manner and at the time specified, a sealed bid in accordance with the terms of this Contract; and,

WHEREAS, TDA, in the manner prescribed by law, has publicly opened, examined, and canvassed the bids submitted, and has determined the above-named Contractor to be the lowest responsible bidder for the work and has duly awarded to the said Contractor therefore, for the sum or sums named in the Contractor's bid, a copy of the Bid Proposal being attached to and made a part of this Contract;

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

ARTICLE I. That the Contractor shall (a) furnish all tools, equipment, supplies, superintendent, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good, substantial, and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the Contract as defined in the attached General Conditions, as modified per IDP requirements and mutually agreed upon, said documents forming the Contract and being as fully a part thereof as if repeated verbatim herein, perform, execute, construct, and complete all work included in and covered by TDA's official award of this Contract to the said Contractor, such award being based on the acceptance by TDA of the Contractor's bid, or part thereof, as follows:

PROJECT NO.

ARTICLE II. That TDA shall pay to the Contractor for performance of the work embraced in this Contract, and the Contractor will accept as full compensation therefore, the sum (subject to adjustment as provided by the Contract) of Four-Hundred Ten Thousand Dollars (\$410,000.00) for all work covered by and included in the Contract award and designated in the foregoing Article I; payment therefore to be made in cash or its equivalent, in the manner provided in the General Conditions.

ARTICLE III. That the Contractor shall start work within ten (10) days following the date stipulated in a written order from TDA to proceed with the work to be performed hereunder, and shall complete the work within the number of consecutive calendar days after the authorized starting date, as stipulated below:

All Work Completed: 90 calendar days

ARTICLE IV. The sworn, notarized statement below shall be signed and notarized before this Contract will become effective.

ARTICLE V. Prior to submitting a final payment request, the Contractor shall furnish a lien waiver certifying that all subcontractors and suppliers have been paid.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals this ____ day of _____, 2017.

Approved as to legal form and adequacy:

TULSA DEVELOPMENT AUTHORITY
(A Public Body Corporate)

Jot Hartley, General Counsel

By: _____
Roy Peters, Jr., Chairman

Date: _____

Date: _____

MAGNUM CONSTRUCTION, INC.
CONTRACTOR

By: _____

Printed Name and Title:

Date: _____

AFFIDAVIT

State of Oklahoma)
)
County of Tulsa) SS

_____, of lawful age, being first duly sworn, on oath says that Contractor has not paid, given, or donated or agreed to pay, give, or donate to any officer or employee of TDA, any money or other thing of value, either directly or indirectly, in the procuring of the Contract.

Roy Peters, Jr.

Subscribed and sworn to before me this _____ day of _____, 2017.

My Commission Expires: _____

Notary Public

Commission No.:

AFFIDAVIT

STATE OF _____)
)ss
COUNTY OF _____)

_____, of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by the Contractor to submit the above Contract to TULSA DEVELOPMENT AUTHORITY, Tulsa, Oklahoma. Affiant further states that Contractor has not paid, given, or donated or agreed to pay, give, or donate to any officer or employee of TDA, any money or other thing of value, either directly or indirectly, in the procuring of the Contract.

Signature

Subscribed and sworn to before me this _____ day of _____, 2017

NOTARY PUBLIC

My Commission Expires:

GENERAL CONDITIONS OF CONTRACT

GC-1. SCOPE:

The Contract stipulations, which follow, are general in scope and may refer to conditions that will not be encountered in the performance of the work included in this Contract, and which are not applicable thereto. Any requirements, provisions, or other stipulations of these General Conditions, which pertain to a nonexistent condition, and are not applicable to the work to be performed hereunder, shall have no meaning in the Contract.

The specifications and drawings are intended to supplement, but not necessarily duplicate each other. Together they constitute one (1) complete set of specifications and drawings, so that any work exhibited in the one and not in the other shall be executed just as if it had been set forth in both, in order that the work shall be completed according to the complete design or designs as decided and determined by the Engineer.

Should anything be omitted from the specifications and drawings which is necessary to a clear understanding of the work, or should it appear various instructions are in conflict, then the Contractor shall request written clarification from the Engineer before proceeding with the construction affected by such omissions or discrepancies.

GC-2. CONTRACT DOCUMENTS:

It is understood and agreed that the Notice to Bidders, Instructions to Bidders, Proposal, Contract, Statutory Bond, Performance Bond, Maintenance Bond, Power of Attorney, Certificates of Insurance, General Conditions, Specifications, Drawings, Addenda, and duly authorized Change Orders, together with any and all supplementary drawings furnished by the Engineer as and when required to make clear and to define in greater detail the intent of the contract, drawings, and specifications, other drawings, specifications, and engineering data furnished by the Contractor (when accepted by the Engineer), and instructions furnished by manufacturers of equipment for the installation thereof, are each and all included in this Contract, and the work shall be done in full compliance and accord therewith.

GC-3. DEFINITIONS:

Any word, phrase, or other expression defined in this paragraph and used in these Contract Documents shall have the meaning herein given:

1. "Contract" or "Contract Documents" shall include all of the documents and drawings mentioned in Paragraph GC-2.
2. "TDA" shall mean the Tulsa Development Authority, Tulsa County, Oklahoma.
3. "Contractor" shall mean the entity named and designated in the Contract who has entered into this Contract to perform the work covered thereby, and its, his, or their duly authorized agents and other legal representatives.
4. "Engineer" shall mean the Engineers who have been designated, appointed, or employed by TDA for this project, or their duly authorized agents; such agents acting within the scope of the particular duties entrusted to them in each case.

5. "Inspector" shall mean the engineering or technical inspector or inspectors duly authorized by the Engineer, limited in each case to the particular duties entrusted to him or them.
6. "Surety" shall mean any entity that executes, as surety, the Contractor's performance bond, maintenance bond, and statutory bond securing the performance of this Contract.
7. "Drawings" shall mean and include all drawings prepared by TDA as a basis for proposals; all drawings submitted by the successful bidder with his proposal and by the Contractor to TDA, when and as accepted by the Engineer, and all drawings submitted by TDA to the Contractor during the progress of the work as provided herein.
8. "Subcontractor" shall mean a person, firm or corporation to whom any portion of this work has been sublet by the Contractor.
9. "Work" shall mean the task to be performed, necessary for the fulfillment of this Contract.
10. "Unit Price" shall mean the cost per specified unit of measurement of work and/or material.
11. "Lump Sum" shall mean the price of an item of work including all things necessary to complete the item as shown on the drawings and specifications. Such an item is not measured in units but is defined by description.

GC-4. MODIFICATIONS AND ALTERATIONS:

In executing the Contract, the Contractor agrees that TDA shall have the right to make such modifications, changes, and alterations as TDA may see fit, in the extent, or plan of the Work agreed to be done or any part thereof, or in the materials to be used therein, either before or after the beginning of construction thereof, without affecting the validity of the Contract or the liability of the Sureties upon the performance of this Contract or the Statutory Bond.

Where any modification, change, or alteration increases the quantity of Work to be performed, and is within the scope of a fair interpretation thereof, such increase shall be paid for according to the quantity of work actually done, either at Unit Prices included in the Contract, or in the absence of such unit, as extra Work. Modifications and alterations, which reduce the quantity of Work to be done, shall not constitute a claim for damages or for anticipated profits on Work involved in such reduction.

The Engineer shall determine, on an equitable basis, the amount of credit due to TDA for Work not performed as a result of modifications or alterations authorized hereunder; where the value of the omitted Work is not fixed by Unit Prices in the Contract; allowance to the Contractor for any actual loss incurred in connection with the purchase, delivery, and subsequent disposal of materials and equipment required for use on the Work as actually built; and any other adjustment of the Contract amount where the method to be used in making such adjustment is not clearly defined in the Contract Documents. In this respect, such determination shall be final and binding only when approved by TDA.

GC-5. DRAWINGS TO BE FURNISHED BY CONTRACTOR:

The Contractor shall furnish all shop, fabrication, assembly, foundation, and other drawings required by the specifications; drawings of equipment and devices, offered by the Contractor for review by the Engineer, shall be in sufficient detail to show adequately the construction and operation thereof; drawings of essential details of any change in design or construction proposed for consideration of the Engineer, by the Contractor in lieu of the design or arrangement required by the Contract or any item of extra work thereunder. The Contractor shall submit to the Engineer, the required number, of each copy of such drawing for the Engineer's review. After review by the Engineer, all such drawings shall become a part of the Contract Documents and the work or equipment shown thereby shall be in conformity therewith unless otherwise required by TDA.

The Engineer's check and acceptance of drawings submitted by the Contractor will be for, and will cover, only general conformity to the plans and specifications and will not constitute a blanket acceptance of all dimensions, quantities, and details of the material or equipment shown; nor shall such acceptance relieve the Contractor of his responsibility for errors contained in such drawings.

GC-6. CONTRACTOR'S BUSINESS ADDRESS:

The business address of the Contractor given in the bid or proposal upon which this Contract is founded is hereby designated as the place to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivery at the above named address, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter, or other communication to the Contractor, shall be deemed sufficient service thereof upon the Contractor and the date of said service shall be the date of such delivery or mailing. Such address may be changed at any time by a written instrument, executed by the Contractor and delivered to the Engineer. Nothing contained herein shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

GC-7. CONTRACTOR'S RISK AND RESPONSIBILITY:

The performance of the Contract and the Work is at the risk of the Contractor until the final acceptance thereof and payment therefor. The Contractor shall take all responsibility of the Work, and shall bear all losses resulting because of the amount or character of the Work, or because the nature of the land in or on which the Work is done is different from what is assumed or expected, or on account of the weather, floods, fire, windstorm, or other actions of the elements, or any cause or causes, whatsoever, for which TDA is not responsible. If the Work or any part or parts thereof is destroyed or damaged from any of the aforesaid causes, the Contractor, at his own cost or expense, shall restore the same or remedy the damage.

The Contractor shall, in a good and workmanlike manner, perform all Work and furnish all supplies and materials, machinery, equipment, facilities, and means, except as otherwise expressly specified, necessary or proper to perform and complete all Work required by the Contract within the time herein specified, in accordance with the provisions of these Contract Documents and Drawings of the Work covered by this Contract, and any and all supplemental Drawings. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements and limitations of the Contract, and shall complete the entire Work to the satisfaction of the Engineer and of TDA.

GC-8. ASSIGNMENT AND SUBLETTING OF CONTRACT:

The Contractor shall give his personal attention to the fulfillment of this Contract, and shall not let, assign or transfer it or his right, title, or interest in any part thereof, by attorney or otherwise, or sublet any part of the Work to any other person without the prior consent of TDA in writing.

Should any Subcontractor fail to perform his work in a satisfactory manner the Contractor upon notice from TDA shall immediately terminate his subcontract. The Contractor shall be fully responsible to TDA for the acts and omissions of his Subcontractor, and of persons either directly or indirectly employed by his Subcontractor. Nothing contained in these Contract Documents shall create any contractual relation between any Subcontractor and TDA.

GC-9. CONTRACTOR'S REPRESENTATIVES:

The Contractor shall designate a person on the Work site to represent him when absent from the Work site.

GC-10. CONTRACTOR AND HIS EMPLOYEES:

The Contractor shall employ competent foremen, experienced mechanics, and others skilled in the Work in this Contract; and shall promptly discharge any and all incompetent or otherwise unsatisfactory employees. Contractor's employees directly employed to perform the Work shall not be paid less than the prevailing minimum wage scale.

Necessary sanitary conveniences for the use of employees on the job site, properly secluded from public observation, shall be provided and maintained by the Contractor. The construction and location of the facility and disposal of the contents shall comply with all laws of the City and the State, relating to health and sanitation regulations.

GC-11. CONTRACTOR'S RIGHT OF PROTEST:

If the Contractor considers any work demanded of him to be outside the requirements of the Contract, or considers any record or ruling of the Engineers to be unfair, he shall, immediately upon such Work being demanded or such record or ruling being made, ask for written instructions or decisions, whereupon he shall proceed without delay to perform the Work or to conform to the record or ruling; and within ten (10) days after the date of receipt of written instructions or decision, he shall file a written protest with the Engineer, stating clearly and in detail the basis of his objections. Except for such protests and objections made of record in the manner herein specified and within the time stated, the records, rulings, or decisions of the Engineer shall be final and conclusive.

GC-12. INSURANCE AND BONDS:

The Contractor (and any subcontractors) shall carry and keep in force during this Contract, policies of insurance in the minimum amounts as set forth below or as required by the laws of the State of Oklahoma. The Contractor shall also furnish an Owner's Protective Policy with TDA and the Engineer as the named assured in the same amounts, issued by the same insurance company as the Contractor's Liability Coverage.

General Liability Insurance with a bodily injury and property damage combined single limit of not less than \$1,000,000 for each occurrence.

Automobile Liability Insurance with a bodily injury and property damage combined single limit of not less than \$1,000,000 for each occurrence.

Employer's Liability and Workmen's Compensation Insurance in the amounts as required by law.

The Contractor shall furnish certificates of such insurance, which shall provide that the insurer will not cancel the insurance without the insurer first giving TDA thirty (30) days written notice of cancellation.

The Contractor shall execute and furnish a Statutory Bond for the protection of laborers, mechanics, and material men in a sum equal to one hundred percent (100%) of the contract price.

The Contractor shall execute and furnish a Performance Bond in a sum equal to one hundred percent (100%) of the contract price.

The Contractor shall execute and furnish a Maintenance Bond in a sum equal to one hundred percent (100%) of the contract price.

Prior to doing blasting, the Contractor shall furnish a Certificate of Insurance, which shall certify that any damage caused by blasting is within the coverage of the Contractor's liability insurance to the full limits thereof.

All bonds and insurance must be executed by a company licensed to do business in the State of Oklahoma, and must be acceptable to TDA.

GC-13. TIME FOR COMPLETION:

The Work shall commence within ten days from and after the date of a written work order from TDA. The Contractor agrees that the Work shall be performed regularly, diligently and uninterruptedly at a uniform rate of progress so as to ensure completion within the number of days after the day on which the work order is issued. If the Contractor fails to complete all Work within the time specified, then the Contractor agrees to pay TDA, not as a penalty, but as liquidated damages for breach of contract, the Sum of **Two Hundred Fifty Dollars (\$250.00)** for each and every calendar day beyond the date on which the work was to be completed. The said amount is fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages TDA would sustain in such event. It is expressly understood and agreed that the said time for completion of the work described herein is a reasonable time for the completion of same.

The Contractor shall commence work within twenty-four (24) hours of traffic control devices being established at the project location. If the Contractor fails to commence work within twenty-four (24) hours of traffic control devices being established at the project location, then the Contractor agrees to pay TDA, not as a penalty, but as liquidated damages the sum of **Two Hundred Fifty Dollars (\$250.00)** per lane for each day of failure to commence work after the specified time set forth. The amount is fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damage TDA would sustain in such event.

Within 14 days after Bid Opening and prior to Award of Bid the successful Contractor will be required to furnish the Engineer with a progress schedule, in a format approved by the Engineer, setting forth in detail the procedure he proposes to follow, and giving the dates on which he expects to start and to complete separate portions of the Work. If at any time, in the opinion of the Engineer, proper progress is not being maintained, such changes shall be made in the schedule of operations, which will satisfy the Engineer that the Work will be completed within the period stated in the Proposal. Monthly progress meetings will be conducted to maintain coordination between all project entities.

The Contractor will be required to provide a full-time, onsite English speaking superintendent for this Work for direct contact with TDA and coordination of Subcontractors. A working foreman is not acceptable as a project superintendent. The superintendent shall be required to be present at the Work site whenever the Contractor or Subcontractors are performing Work. The superintendent shall be a representative of the Contractor with the authority to make decisions. If the Contractor fails to provide a non-working superintendent on a day when Work is being performed, the Contractor agrees to pay TDA, not as a penalty, but as liquidated damages for such breach of contract, the sum of **Two Hundred Fifty Dollars (\$250.00)** for each and every calendar day it fails to provide a non-working superintendent at the Work site. This amount is fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages TDA would sustain in such an event.

It is further agreed that time is of the essence as to each and every portion of this Contract and the specifications wherein a definite and certain time is fixed for the performance of any act whatsoever; and where under the Contract an allowance of additional time for completion of any Work is made, the new time fixed by such extension shall be of the essence of this Contract.

Failure to complete the Work within the specified time, as set forth in the Contract, may be grounds for disqualification for future consideration for contracts with TDA.

Final acceptance of the Work is defined as the completion of the Work and the Contractor moving off the project site. No defined or additional Work is needed.

Contract Evaluation forms will be compiled by TDA staff upon completion of Work to provide a record of the Contractor's performance for use in subsequent projects.

GC-14. EXTENSIONS OF TIME:

Should the Contractor be delayed in the final completion of the Work by any act or neglect of TDA or Engineer, or any employee of either, or strikes, injunctions, fire, or other causes outside of and beyond the control of the Contractor and which, in the opinion of the Engineer, could have been neither anticipated nor avoided, then an extension of time sufficient to compensate for the delay, as determined by the Engineer, shall be granted by TDA, provided, however, that the Contractor shall give TDA and the Engineer notice in writing of the cause of each delay on the "Extension of Time Request" form enclosed in these documents, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work.

The Contractor shall submit the "Extension of Time Request" form with each partial payment application. Failure to submit the Extension of Time Request with a partial payment application shall constitute a complete waiver of any claim for time extension for the period covered by the partial payment.

Extensions of time will not be granted for delays caused by unsuitable ground conditions, inadequate construction force, or the failure of the Contractor to place orders for the equipment or materials a sufficient time in advance to insure delivery when needed. Any extension of time granted by TDA shall not release the Contractor and Surety herein from the payment of liquidated damages as provided in the General Conditions of this Contract, for a period of time not included in the original Contract or the time extension, as herein provided.

In no event shall TDA be liable or responsible to the Contractor, Surety, or any person for or on account of any stoppage or delay of Work herein provided for by injunction or any other kind of legal, equitable proceedings, or from or by or on account of any delay from any other cause whatsoever.

GC-15. ENGINEER'S POWERS AND DUTIES:

The Engineer will provide general administration of the Contract, including performance of the functions hereinafter described.

The Engineer will be TDA's representative during construction and until final payment. The Engineer will have authority to act on behalf of TDA to the extent provided herein unless otherwise modified by written instrument, which will be shown to the Contractor. The Engineer will advise and consult with TDA, and all of TDA's instructions to the Contractor shall be issued through the Engineer. Nothing contained in the Contract documents shall create any contractual relationship between the Engineer and the Contractor.

The Engineer shall at all times have access to the Work as provided elsewhere herein. The Engineer will make periodic visits to the Work site to familiarize himself generally with the progress and quality of the Work and to determine in general whether the Work is proceeding in accordance with the Contract. On the basis of his on-site observations as Engineer, he will keep TDA informed of the progress of the Work and will endeavor to guard TDA against defects and deficiencies in the Work caused by the Contractor. The Engineer will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract. Based on such observations and the Contractor's applications for payment, the Engineer will determine the amounts owing to the Contractor and will issue certificates for payment in amounts as provided elsewhere herein.

The Engineer may provide one or more full-time project representatives to assist the Engineer in carrying out his responsibilities at the Work site. The duties, responsibilities and limitations of authority of the Engineer as TDA's representative during construction as set forth herein will not be modified or extended without written consent of TDA, the Contractor and the Engineer.

The Engineer will not be responsible for the acts or omissions of the Contractor, any Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

The Engineer shall decide the meaning and intent of any portion of the specifications, and of any plans or Drawings, where the same are found to be obscure or be in dispute; he shall have the right to correct any errors or omissions therein when such corrections are necessary to further the intent of said specifications, plans or Drawings; the action of such correction shall be effective from the date that the Engineer gives due notice thereof.

Any differences or conflicts, which may arise between the Contractor and other contractors with TDA in regard to their work, shall be adjusted as determined by the Engineer.

Neither the Engineer's authority to act under this article or elsewhere in the Contract nor any decision made by the Engineer in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the Work.

Whenever in the Contract the terms "as ordered", "as directed", "as required", "as allowed", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of like effect or import are used, to describe requirements, direction, review or judgement of the Engineer as to the Work, it is intended that such requirement, direction, review, or judgement will be solely to evaluate the Work for compliance with the Contract (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that the Engineer shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of this General Condition.

GC-16. TDA'S RIGHT OF INSPECTION:

TDA shall appoint or employ such engineers or inspectors as TDA may deem proper to inspect the materials furnished and the work performed, and to determine whether said materials are furnished and work is performed in accordance with the Drawings and specifications therefor. The Contractor shall furnish all reasonable aid and assistance required by the Engineer, or by the Inspectors, for the proper inspection and examination of the Work and all parts thereof, even to the extent of uncovering or taking out portions of finished Work. Should the Work thus exposed or examined prove satisfactory, the uncovering or removing and the replacing of the covering or the making good of the parts removed shall be paid for by TDA; however, should the Work exposed or examined prove unsatisfactory, the uncovering, taking out, replacing, and making good shall be at the expense of the Contractor.

Such inspection shall not relieve the Contractor of any obligation to perform said Work strictly in accordance with the Drawings and specifications or any modifications thereto as herein provided; and the Work not so constructed shall be removed and made good by the Contractor at his own expense; and free of all expense to TDA, whenever so ordered by the Engineer, without reference to any previous oversight or error in inspection.

GC-17. SUSPENSION OF WORK ON NOTICE:

The Contractor shall delay or suspend the progress of the Work or any part thereof whenever he shall be so required by written order of TDA or Engineer, and for such period of time as it or he shall require. Any such order of TDA or Engineer shall not modify or invalidate in any way the provisions of this Contract.

GC-18. QUALITY OF WORKMANSHIP:

All workmanship shall be the best possible, both as to material and labor that could be demanded by these Contract Documents or if no specific description is given, it is understood that the best quality is required.

GC-19. SATURDAY, SUNDAY, HOLIDAY, AND NIGHT WORK:

No work shall be done between the hours of 7:00 p.m. and 7:00 a.m., or on Saturday, Sunday, or legal holidays without the written approval or permission of the Engineer in each case, except such work as may be necessary for the proper care, maintenance, and protection of work already done, or of equipment, or in the case of an emergency.

GC-20. LAWS AND ORDINANCES:

The Contractor shall keep himself fully informed of all existing and current regulations of TDA, county, state and national laws which in any way limit or control the actions or operations of those engaged upon the Work, or affecting the materials supplied to or by them. The Contractor shall at all times observe and comply with all applicable ordinances, laws, and regulations; and shall protect and indemnify TDA and the TDA's employees and agents against any claims or liability arising from or based on any violations of the same.

The contractor certifies that it and all of its Subcontractors to be used in the performance of the Contract are in compliance with 25 O.S. Sec. 1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O. S. Sec. 1312 and includes but is not limited to the free Employee Verification Program (E-Verify) available at www.dhs.gov/E-Verify.

The Contractor shall take the necessary actions to ensure its facilities are in compliance with the requirements of the Americans with Disabilities Act (ADA). It is understood that the program of the Contractor is not a program or activity of TDA. The Contractor agrees that its program or activity will comply with the requirements of the ADA. Any costs of such compliance will be the responsibility of the Contractor. Under no circumstances will Contractor conduct any activity which it deems to not be in compliance with the ADA.

GC-21. TAXES AND PERMITS:

Unless otherwise specified in these Contract Documents, the Contractor shall pay all sales, use, and other taxes that are lawfully assessed against TDA or Contractor in connection with the Work included in this Contract and shall obtain all licenses, permits, and inspections required for the Work. Contractor shall comply with all zoning ordinances of TDA, as provided in the Tulsa Zoning Code, Title 42 Tulsa Revised Ordinances and conform with all zoning requirements established by the Tulsa Metropolitan Area Planning Commission and the Board of Adjustment. Contractor can call the Indian Nations Council of Governments (INCOG) at (918) 584-7526, to determine if any zoning requirements must be met.

GC-22. PROTECTION OF PROPERTY:

The protection of TDA, state, and government monuments, street signs, and other TDA property is of prime importance, and if the same be damaged, destroyed, or removed, they shall be repaired, replaced, or paid for by the Contractor.

GC-23. PATENT RIGHTS:

All fees for any patented invention, article, or arrangement that is based upon, or in any manner connected with the construction, erection, or maintenance of the Work or any part thereof embraced in the Contract and these specifications, shall be included in the price stipulated in the Contract for said Work. The Contractor shall protect and hold harmless TDA against any and all demands of such fees or claims.

GC-24. DEFENSE OF SUITS:

In case any action at law or suit in equity is brought against TDA or any employer, officer, or agent thereof, for or on account of the failure, omission or neglect of the Contractor to do and perform any of the covenants, acts, matters, or things required by this Contract to be done or performed, or for injury or damage caused by negligence or willful act of the Contractor or his Subcontractors or his or their agents, or in connection with any claim or claims based on the lawful demands of Subcontractors, workmen, material men, or suppliers of machinery and parts thereof, equipment, power tools, and supplies incurred in the fulfillment of this Contract, the Contractor shall indemnify and save harmless TDA and its employees, officers, and agents, and the Engineer and any employees, officers and agents thereof, of and from all losses, damages, costs, expenses, judgements, or decrees whatsoever arising out of such action or suit that may be brought without requiring said parties to give any notice thereof.

TDA may suspend payments of any sum due or to become due for work done on this Contract until such claims, suits, actions, or proceedings are final and liability has been determined. The amount of such damages or liability shall be deducted from sums due or to become due on this Contract. TDA will retain the sums mentioned above until the Contractor furnishes evidence that satisfactory settlement has been made. Any action taken by TDA shall not excuse the Contractor for failure to perform this Contract or bar the TDA from legal action to recover from the Contractor the amount of damages or liability suffered in excess of the amount retained.

The Contractor shall furnish TDA with satisfactory evidence upon demand that all persons who have done work on the Contract or furnished materials for the Contract have been paid in full. If such evidence is not furnished, the amount necessary to pay the lawful claims may be retained until such evidence is furnished, or if such evidence is not furnished, TDA may apply any sums retained to valid claims and charge the amounts disbursed, including the costs of any action that may be necessary to prove or disprove the claims against the Contractor.

GC-25. REMOVAL OF CONDEMNED MATERIALS AND STRUCTURES:

The Contractor shall remove from the site of the Work, without delay, all rejected and condemned materials or structures of any kind brought to or incorporated in the Work, and upon his failure to do so, or to make satisfactory progress in so doing, within forty-eight (48) hours after the service of a written notice from the Engineer ordering such removal, the condemned material or structures may be removed by TDA and the cost of such removal be taken out of the money that may be due or may become due the Contractor by virtue of this Contract. No such rejected or condemned material shall again be offered for use by the Contractor under this or any other Contract under this project.

GC-26. EXTRA WORK:

If a modification increases the amount of the Work, and the added Work or any part thereof is of a type and character which can properly and fairly be classified under one or more Unit Price items of the Bid Form, then the added Work or part thereof shall be paid for according to the amount actually done and at the applicable Unit Price. Otherwise, such work shall be paid for as hereafter provided.

Claims for extra work will not be paid unless TDA authorized the work covered by such claims in writing. The Contractor shall not have the right to take action in court to recover for extra work unless the claim is based upon a written order from TDA. Payments for extra Work will be based on agreed lump sums or on agreed Unit Prices whenever TDA and the Contractor agree upon such prices before the extra Work is started.

For the purpose of determining whether proposed extra work will be authorized, or for determining the payment method for extra work, the Contractor shall submit to the Engineer, upon request, a detailed cost estimate for proposed extra work. The estimate shall show itemized quantities and charges for all elements of direct cost. The cost shall include only those extra costs for labor and materials expended in direct performance of the extra work and may include:

- (a) **Labor.** For all labor and foremen in direct charge of the specific operations, the Contractor shall receive the rate of wage (or scale) agreed upon in writing before beginning work for each and every hour that said labor and foremen are actually engaged in such work. An amount equal to fifteen (15) percent of the sum of the above items will also be paid the Contractor.
- (b) **Bond, Insurance, and Tax.** For property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes on the force account work, the Contractor shall receive the actual cost, to which cost no percentage will be added. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax.
- (c) **Materials.** For materials accepted by the Engineer and used, the Contractor shall receive the actual cost of such materials delivered on the Work site, including transportation charges paid by him (exclusive of machinery rentals as hereinafter set forth), to which cost ten (10) percent will be added.
- (d) **Equipment.** For any machinery or special equipment (other than small tools), including fuel, lubricants and transportation costs, the use of which has been authorized by the Engineer, the Contractor shall receive the rental rates agreed upon in writing before such work is begun for the actual time that such equipment is in operations on the Work, as provided in the ODOT Subsection 109.04 (b3), to which rental sum no percentage will be added.
- (e) **Miscellaneous.** No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

The form on which field cost records are kept, the construction methods and the type and quantity of equipment used shall be submitted to the Engineer for approval.

Construction equipment which the Contractor has on the Work site and which is of a type and size suitable for use in performing the extra Work shall be used. The hourly rental charges for equipment, including all insurance, taxes, fuel, and operating costs, shall not exceed twelve (12) percent of the latest applicable Associated Equipment Distributors published monthly rental rates and shall apply to only the actual time the equipment is used in performing the extra Work.

When extra Work requires the use of equipment which the Contractor does not have on the Work site, the Contractor shall obtain the approval of the Engineer before renting or otherwise acquiring additional equipment. The rental charges for the additional equipment shall not exceed the latest applicable Associated Equipment Distributors published rental rates.

The Contractor shall file with the Engineer, certified lists in duplicate, of any equipment and the schedule of pay rates for common and semi-skilled labor and operators of various classes which are intended to be used in performing the Work covered by this Contract. These rates shall be subject to the review of the Engineer. This information will be used by the Engineer for computation of extra work as mentioned above; however, if the Contractor fails to file these lists with the Engineer prior to starting any Work covered by this Contract, then the Engineer's computation shall be based on average wages and rates paid on TDA work.

GC-27. PAYMENT FOR CONTRACTOR'S PLANT AND MISCELLANEOUS TEMPORARY WORK:

For providing plant, tools, and equipment, and for furnishing, erecting, maintaining, and removing scaffolding and construction plant, construction roads, camps, sanitary conveniences, temporary water supply, trestles, dewatering and other temporary works, the Contractor shall receive no direct payment, but compensation for them shall be considered as having been included in the prices stipulated for the appropriate items.

GC-28. BASIS OF PAYMENT FOR ITEMS OF WORK:

The Contractor shall be paid for all Work performed under the Contract based on the Engineer's computations of as-built quantities and the Contractor's Unit Price or Lump Sum bid per item. This payment shall be full compensation for furnishing all supplies, materials, tools, equipment, transportation, and labor required to do the Work; for all loss or damage, because of the nature of the work, the action of the elements or any unforeseen obstruction or difficulty which may be encountered in the performance of the Work, and for which payment is not specifically provided; for all expense incurred by or because of any suspension or discontinuance of all or any part of the Work; and for faithfully completing the Contract according to the Drawings and specifications and requirements of the Engineer.

GC-29. PAYMENTS:

(1) Partial: If the work is progressing in good and workmanlike manner and if the Contractor is faithfully carrying out the terms of this Contract, approximate estimates of the work done shall be made by the Engineers between the first and fifteenth of each calendar month, including labor actually performed and supplies or materials actually used or incorporated in the Work, and an allowance will be made for acceptable materials satisfactorily delivered, stored and secured on the site of the Work in such amount as can be incorporated in the Work within a reasonable time. TDA shall have a lien as owner on any materials stored on the site of the Work.

Each partial estimate for payment shall contain or have attached an affidavit in the form found in this book of specifications, as required by law.

The Contractor shall submit with each partial pay estimate a complete list of vendors and suppliers with itemized purchases and invoices from each vendor. Each list shall contain the name of the contractor or Subcontractor ordering the materials or supplies, and the specific use or placement of each of the materials purchased by TDA for this project in accordance with Article IIB of the Contract. At the direction of the Contractor, TDA will withhold retainage in the amount of 5% on materials and supplies to be purchased under the terms of this Contract.

Each month that work is performed for which payment is due, the Contractor shall submit to the Engineer an application for such payment, provided said payment is not less than \$1,000.00, and, if required, receipts or other vouchers from Subcontractors showing his payments to them shall be submitted.

Each estimate shall be of the approximate value of all work performed and materials in place or delivered to the Work site, determined as aforesaid from the beginning of this contract to the date fixed for the current estimate, from which shall be deducted five percent (5%) or a lesser amount approved by TDA, and, in addition thereto, all previous payments and all other sums withheld under the foregoing provisions of this Contract, the remainder to become due and payable; after the estimate has been reviewed and signed by the Engineer the TDA shall pay the estimate in the regular manner in the amount determined as due unless it shall be known by TDA that there is good reason under the terms of this Contract for withholding same.

When the Contractor has completed Work constituting more than fifty percent (50%) of the total Contract amount, the retainage will be reduced to five percent (5%) of the amount earned to date; provided, however, that TDA or its duly authorized representative has determined that satisfactory progress is being made and upon approval by the Surety.

The Contractor may withdraw any part or the whole of the amount which has been retained from partial payment to the Contractor pursuant to the terms of Contract, upon depositing with or delivery to TDA:

- (1) United States Treasury Bonds, United States Treasury Notes, United States Treasury bills, or
- (2) General Obligation Bonds of the State of Oklahoma, or
- (3) Certificates of Deposit from a state or national bank having its principal office in the State of Oklahoma.

No retained amount shall be withdrawn which would represent an amount in excess of the market value of the securities at the time of deposit or of the par value of such securities, whichever is lower.

All partial estimates are subject to correction in the final estimate.

(2) Final Payment:

When this contract, in the opinion of the Engineer, shall be completely performed on the part of the Contractor, the Engineer shall proceed with all reasonable diligence to measure up the Work and shall make out the final estimate for the same, and shall, except for cause herein specified, give to the Contractor, within thirty (30) days after receiving said certificate, an order to TDA for the balance found to be due, excepting therefrom such sum or sums as may be lawfully retained under any of the provisions of the Contract; PROVIDED, that nothing herein contained shall be construed to affect the rights of TDA hereby reserved to reject the whole or any portion of the aforesaid Work should the said estimate and certificate be found or known to be inconsistent with the terms of this Contract or otherwise improperly given; PROVIDED, that if, in case after the work hereunder has been accepted and final payment made, it shall be discovered that any part of the Contract has not been fully performed or has been done in an improper or faulty manner, the Contractor shall immediately remedy such defect, or, in case of neglect to do so within a reasonable time after notice thereof, shall be liable for and shall pay to TDA the cost of remedying such defect or a sum equal to the damages sustained thereby, as

TDA shall elect, and the acceptance of and final payment for the Work shall be no bar to suit on any bond against any principal or principals, or Surety or Sureties, or both, given for the due performance of the Contract, or for the recovery of such cost or the equivalent of such damage.

TDA will pay to the Contractor interest at the rate of three-fourths percent (3/4%) per month on the final payment due the Contractor. For lump sum contracts, the interest shall commence thirty (30) days after the Work under the Contract has been completed and accepted and all required material certifications and other documentation required by the Contract have been furnished by TDA by the Contractor, and shall run until the date when the final payment or estimate is tendered to the Contractor. For contracts bid by Unit Prices, the interest will commence sixty (60) days after the above conditions are satisfied. When contract quantities or the final payment amount is in dispute, the interest-bearing period will be suspended until the conclusion and settlement of the dispute.

GC-30. CONTRACTOR REIMBURSEMENT FOR SURETY BOND:

For contracts of \$1,000,000.00 or more, the Contractor may receive reimbursement for the cost of the surety bonds after issuance of a work order. To receive reimbursement, the Contractor shall submit a standard partial payment form and affidavit, and a copy of the surety bond invoice. The final partial pay estimate will be reduced by the amount paid for surety bond reimbursement.

GC-31. RELEASE OF LIABILITY AND ACCEPTANCE:

The acceptance by the Contractor of the final payment shall operate as, and shall be a release to TDA and every employee, officer and agent thereof, from all claims and liability to the Contractor for anything done or furnished for or relating to the Work, or for any act or neglect of TDA or of any person relating to or affecting the Work, and, following such acceptance, no person, firm, or corporation other than the signer of this Contract as Contractor, will have any interest hereunder, and no claim shall be made or be valid, and neither TDA nor any employees, officers, or agents thereof shall be liable or be held to pay any money, except as herein provided.

It shall be the duty of the Engineer to determine when the Work is completed and the Contract fulfilled, and to recommend its acceptance by TDA. The Work herein specified to be performed shall not be considered finally accepted until TDA has accepted all the Work.

GC-32. RIGHT OF TDA TO TERMINATE CONTRACT:

If the Work to be done under this Contract shall be abandoned by the Contractor, or if this Contract shall be assigned by him otherwise than as herein provided, or if the Contractor should be adjudged bankrupt, or if a general assignment of his assets be made for the benefit of his creditors, or if a receiver should be appointed for the Contractor or any of his property; or if at any time the Engineer shall certify in writing to TDA that the performance of the Work under this Contract is being unnecessarily delayed, or that the Contractor is executing the same in bad faith or otherwise not in accordance with the terms of the Contract; or if the work be not substantially completed within the time named for its completion, or within the time to which such completion date may be extended, then TDA may serve written notice upon the Contractor and his Surety of said TDA's intention to terminate this Contract, and unless within five (5) days after service of such notice upon the Contractor, a satisfactory arrangement is made for the continuance of the Contract, this

Contract shall cease and terminate. In the event of such termination, TDA shall immediately serve notice upon the Surety and Contractor, and the Surety shall have the right to take over and complete the Work, provided, however, that if the Surety does not commence performance thereof within fifteen (15) days from the date of said notice of termination, the TDA may take over the Work and perform same to completion, by Contract or otherwise, for the account and at the expense of the Contractor, and the Contractor and his Surety shall be liable to TDA for any and all excess cost sustained by TDA by reason of such performance and completion. In such event TDA may take possession of and utilize in completing the Work, all such materials, equipment, tools, and plants as may be on the site of the Work and necessary therefor. The Contractor shall not receive any other payment under the Contract until said Work is wholly finished, at which time, if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by TDA in finishing the Work as aforesaid, the amount of the excess shall be paid to the Contractor, but if such expense shall exceed the unpaid balance, the Contractor shall pay the difference to TDA.

GC-33. ADMINISTRATIVE COSTS AND FEES:

Cash Improvements - In the event the improvements are to be paid for in cash, the costs and fees for publication, engineering, filing, recording, abstracting, acquisition of easements, flushing, and pipe testing, shall be paid by TDA unless otherwise provided for in these Contract Documents.

Assessment Improvements: In the event the improvements are to be paid for by the issuance of special assessment bonds, the costs and fees for publication, engineering, filing, recording, abstracting, acquisition of easements, flushing, pipe testing, and other authorized costs shall be added to the contract price and paid for in the same manner as the other Work included in this Contract. The Contractor shall pay TDA the amount of said charges before the execution and delivery of the special assessment bonds or other payments. If the Contractor fails, neglects, or refuses to pay said charges within thirty (30) days after the bonds are ready for delivery, he shall pay TDA interest at the rate of seven percent (7%) per annum and shall be liable for same in a civil suit. The Contractor shall pay the pipe testing fees directly to the testing laboratory.

GC-34. PAYMENT OR ACCEPTANCE NOT A WAIVER BY TDA:

Neither acceptance by TDA or the Engineer or any employee of either nor any order by TDA for the payment of money, or the payment thereof, nor any taking of possession by TDA, nor the granting of any extension of time, shall operate as a waiver of any rights or powers of TDA hereunder, and in the event that after the Work hereunder has been accepted and final payment made, it should be discovered that any part of this Contract has not been fully performed, or has been done in a faulty or improper manner, the Contractor shall immediately remedy such defect, or in the event of neglect to do so within a reasonable time after notice thereof, shall be liable for and shall pay to TDA the cost of remedying such defect, or a sum equal to the damage caused thereby, as TDA may elect. The acceptance of the Work or final payment therefor shall be no bar to suit against the Contractor or Surety, or both.

GC-35. CONTRACTOR'S OBLIGATION AFTER ACCEPTANCE:

Contractor further agrees, without cost other than is specially provided for in this Contract, at any and all times during one (1) year next following the completion and final acceptance of the Work embraced in this Contract, without notice from TDA, to repair or rework any file that fails to function properly due to defective material or workmanship and to indemnify, save harmless and defend TDA from any and all suits and actions of every description brought against TDA for, or on account of injuries or damages alleged to have been received or sustained by any party or parties by reasons of, or arising out of the failure of Contractor to repair or rework any file where such failures have occurred, which said injuries or damages are alleged to have been received or incurred within one (1) year from the final acceptance of the Work hereunder, and to pay any and all judgements that might be rendered against TDA in any suits and actions, together with such expenses or attorney fees expended or incurred by TDA in the defense thereof, and Contractor hereby expressly waives any notice that might by law be required to be given to them by TDA of any defect, break, settling, or failure or of any other condition that might be the cause of injury or damage to any person on account of which a claim or suit might be made or filed against TDA, or a judgement taken for damages against TDA. It is expressly agreed that the acceptance of the Work by TDA shall constitute no bar against any person injured or damaged by the failure of the Contractor to perform all of his covenants and agreements hereunder from maintaining an action against the Contractor, or against TDA from enforcing its rights against the Contractor hereunder.

GC-36. NOTICES:

Any notices or other communications hereunder may be given to Contractor at the address listed in the Proposal, to the Surety at the office of the Attorney-in-Fact signing the bond or at Surety's home office address on file with the Insurance Commissioner of the State of Oklahoma, and to TDA, or at such other place as may be designated in writing. The delivery to such address, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter, or other communication to the Contractor, shall be deemed sufficient service thereof, and the date of said service shall be the date of such delivery or mailing.

GC-37. RELATION TO OTHER CONTRACTORS:

Nothing herein contained and nothing marked upon the Drawings shall be interpreted as giving the Contractor exclusive occupancy of the territory or right-of-way provided. TDA and its employees, officers, and agents for any just purpose, and other contractors of the TDA for any purpose required by their respective contracts, may enter upon or cross this territory or occupy portions of it or take materials therefrom as directed or permitted. When two or more contracts are being executed at one time on the same or adjacent land in such manner that the work on one contract may interfere with the work on another, the Engineers shall decide which contractor shall cease work and which shall continue, or whether the work on both contracts shall progress at the same time and in what manner. When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men, machines, or appliances for the execution of another contract, such privilege of access or any other reasonable privilege may be granted by the Engineers to the contractor desiring it, to the extent, amount, in the manner and at the time permitted. Any decision regarding the method or time of conducting the work or the use of the territory shall not be made the basis of claims for delay or damage except as otherwise stipulated. The Contractor shall not cause any unnecessary hindrance or delay to any other contractors on the premises, and shall bear all damages done to the work of such other contractors by him or by his employees.

GC-38. PARTIAL OCCUPANCY AND USE:

TDA, upon advance written notification to the Contractor, shall have the right to occupy and use any completed or partially completed portions of the Work site when such occupancy and use are in TDA's best interest, notwithstanding completion of the entire project.

Such partial occupancy and use shall be upon the following terms:

- a. The Engineer shall make an inspection of the portion or portions of the Work concerned, and report to TDA his findings as to the acceptability and completeness of the Work. The Engineer's report shall include a list of items to be completed or corrected before final payment.
- b. TDA, upon acceptance of the Engineer's report, shall give written notice to the Contractor of TDA's intention to occupy and use said portions of the Work site. The TDA's notice shall include a copy of the Engineer's report, shall clearly identify the portions of the Work site to be occupied and used, and shall establish the date of said occupancy and use.
- c. From the date thus established, TDA shall assume all responsibilities for operation, maintenance, and the furnishing of water, gas, and electrical power for the portions of the Work site thus occupied and used. TDA shall have the right to exclude the Contractor from those portions of the Work site but shall provide the Contractor reasonable access to complete or correct necessary items of Work.
- d. The one year guarantee required by the General Conditions shall not begin until completion and final acceptance of the entire project, except as to any items of mechanical or electrical equipment such as pumps, blowers, process equipment, instrumentation, controls, metering equipment, heating, and ventilating equipment and similar items having movable or operable components, and any of which are thus used by TDA. For said equipment, the one-year warranty shall start from the date established in the written notice from TDA.

6/13/05

- e. Occupancy or use of any space in the Work site shall not constitute acceptance of Work not performed in accordance with the Contract, nor relieve the Contractor of liability to perform any Work required by the Contract but not completed at the time of said occupancy and use.
- f. The Contractor shall not be held responsible for normal wear and tear or damage resulting from said occupancy, except to the extent that such damage is covered by the one-year guarantee.
- g. The partial occupancy and use of any portions of the Work site by TDA shall not constitute grounds for claims by the Contractor for release of any amounts retained from payments under the provisions of the Contract. The retained amounts will not be due until completion of the entire project for final acceptance and final payment, as set forth in the General Conditions.