

CONTRACT

THIS CONTRACT by and between the NORMAN UTILITIES AUTHORITY, a Public Trust of the State of Oklahoma, hereinafter designated as the AUTHORITY, and Horseshoe Construction, Inc. hereinafter designated as the CONTRACTOR, effective the date last executed below,

WITNESSETH

WHEREAS, the AUTHORITY has caused to be prepared in accordance with law, specifications and other Contract Documents for the Work hereinafter described; and has approved and adopted all of said Contract Documents; and has given and advertised an Invitation to Bid as required by law; and has received sealed Bids for the furnishing of all labor, materials and equipment for the following project (The Work):

FYE17 SEWER MAINTENANCE PROJECT
NORMAN, OKLAHOMA

in accordance with and as outlined and set out in the terms and provisions of said Contract Documents; and,

WHEREAS, the CONTRACTOR in response to said Invitation to Bid, has submitted to the AUTHORITY in the manner and at the time specified, a sealed Bid in accordance with the terms of said Contract Documents; and

WHEREAS, the AUTHORITY, in the manner provided by law, has publicly opened, examined, and canvassed the Bids submitted, and has determined and declared the above-named CONTRACTOR to be the best Bidder on the above-prepared project, and has duly awarded said Bid to said CONTRACTOR; and

NOW, THEREFORE, for and in consideration of the mutual agreements, and covenants herein contained, the AUTHORITY and the CONTRACTOR agree as follows:

ARTICLE 1 - THE WORK

The CONTRACTOR shall, in good and first-class, workmanlike manner at his own cost and expense, furnish all labor, materials, tools, and equipment required to perform and complete said Work in strict accordance with this CONTRACT and said Contract Documents, per the Table of Contents, including, but not limited to:

- the Invitation to Bid published in the Norman Transcript
- the Instructions to Bidders;
- Qualification Statements of Bidder and Bidder's Surety
- the CONTRACTOR'S Bid or Proposal;
- Affidavits and Certificates thereto
- the Bonds hereto;
- the Conditions of the Contract
- the Technical Specifications and Construction Drawings

all of which documents are on file in the Office of the AUTHORITY, and are made a part of this CONTRACT as fully as if the same were set out in full, with the following additions and/or exceptions:

Addendum No. 1 dated March 9, 2020

ARTICLE 2 – THE CONTRACT PRICE

The AUTHORITY will pay the CONTRACTOR, because of his performance of the Contract, for the total quantities of Work performed at the unit prices named in said sealed bid, to wit:

Two million, seven hundred ninety-six thousand, one hundred sixty-one and 25/100 Dollars
(\$) 2,796,161.25 ,

subject to additions and deductions as provided in the Contract Documents.

ARTICLE 3 – MODIFICATION OF QUANTITIES

The AUTHORITY reserves the right to add to or subtract from the estimated quantities or amount of work to be performed up to a maximum of 15% of the total bid price.

ARTICLE 4 – CONTRACT PAYMENTS

A. The AUTHORITY shall promptly pay the CONTRACTOR for the work performed as follows:

Payment for unit price items shall be at the unit price bid for actual construction quantities. (or)

Payment for the lump sum price items shall be at the price bid for actual construction complete in place.

B. The AUTHORITY shall make payments, minus a retainage as stipulated in the Contract Documents, to the CONTRACTOR in the following manner: On or about the first day of each month, the project manager, or other appropriate person, will make accurate estimates of the value, based on CONTRACT prices, of work done, and materials incorporated in the work and of materials suitably stored at the site thereof during the preceding calendar month. The CONTRACTOR shall furnish to the project manager, or other appropriate person, such detailed information as he may request to aid him as a guide in the preparation of the monthly estimates.

Each monthly estimate for payment must contain or have attached an affidavit in accordance with Oklahoma Statutes Title 74, Section 3110, and Title 62, Section 310.09.

C. Should any defective work or materials be discovered, or should a reasonable doubt arise as to the quality of any work completed, there will be deducted from the next estimate an amount equal to the value of the defective or questionable work and shall not be paid until the defects are remedied.

D. On completion of the work, but prior to the acceptance thereof by the AUTHORITY, it shall be the duty of the project manager, or other appropriate person, to determine that said work has been completely and fully performed in accordance with said Contract Documents; and upon making such determinations said official shall make his final certificate to the AUTHORITY.

E. The CONTRACTOR shall furnish proof that all claims and obligations incurred by him in connection with the performance of said work have been fully paid and settled; said information shall be in the form of an affidavit, which shall bear the approval of the surety on the Contract Bonds for payment of the final estimate to the CONTRACTOR; thereupon, the final estimate (including retainage) will be approved and paid.

ARTICLE 5 – COMMENCEMENT AND COMPLETION

The CONTRACTOR shall commence said work within ten (10) calendar days following receipt of a NOTICE-TO-PROCEED, prosecute the same vigorously and continuously, and complete the same within Three hundred-sixty (360) calendar days following the effective date of NOTICE-TO-PROCEED.

ARTICLE 6 – TIME OF THE ESSENCE/LIQUIDATED DAMAGES

Time is of the essence in completion of this project and the AUTHORITY will suffer financial loss if the Work is not completed within the time(s) specified in preceding paragraph. CONTRACTOR and AUTHORITY also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding such actual loss. Accordingly, instead of requiring any such proof, CONTRACTOR and AUTHORITY therefore further agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay AUTHORITY five hundred dollars (\$500.00) for each calendar day that expires after the completion time specified in preceding paragraph, plus any authorized extensions thereof, for completion and readiness for final payment of each portion of the Work.

ARTICLE 7 – ADDITIONAL WORK

- A. That if any additional work is performed or additional materials provided by the CONTRACTOR upon authorization by the AUTHORITY, the CONTRACTOR shall be compensated therefore at the unit price bid or as agreed to by both parties in the execution of a Change Order.
- B. The CONTRACTOR shall not undertake to furnish any materials or to perform any work not specifically authorized under the terms of this CONTRACT or the Contract Documents unless additional materials or work are authorized by written Change Order, executed by the AUTHORITY; and that in the event any additions are provided by the CONTRACTOR without such authorization, the CONTRACTOR shall not be entitled to any compensation therefor whatsoever.

ARTICLE 8 – OKLAHOMA CONTRACT

The parties mutually agree and acknowledge that this is an Oklahoma CONTRACT and any dispute shall be resolved in accordance with the Laws of the State of Oklahoma and actions if necessary shall be brought in the District Court of Cleveland County. In the event of ambiguity in any of the terms of this CONTRACT, it shall not be construed for or against any party on the basis that such party did or did not author the same.

ARTICLE 9 – THIRD PARTIES

No provision of this CONTRACT or of any such aforementioned documents shall be interpreted or given legal effect to create an obligation on the part of the AUTHORITY to third persons, including, by way of illustration but not exclusion, sureties upon performance bonds, payment bonds or other bonds, assignees of the CONTRACTOR, subcontractors, and persons performing labor, furnishing material or in any other way contributing to or assisting in the performance of the obligations of the CONTRACTOR; nor shall any such provisions be interpreted or given legal effect to afford a defense against any obligation owed or assumed by such third person to the AUTHORITY or in any way to restrict the freedom of the AUTHORITY to exercise full discretion in its dealing with the CONTRACTOR.

ARTICLE 10 – BONDS AND INSURANCE

The CONTRACTOR shall furnish surety bonds and certificate of insurance as specified in the Contract Documents which bonds and insurance must be approved by the AUTHORITY prior to issuance of the NOTICE-TO-PROCEED and commencement of work on the project.

ARTICLE 11 - TERMINATION

This CONTRACT may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this CONTRACT. The non-performing

party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

ARTICLE 12 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this CONTRACT or the occurrence of any event rendering any portion or provision of this CONTRACT void shall in no way affect the validity or enforceability of any other portion or provision of this CONTRACT. Any void provision shall be deemed severed from this CONTRACT, and the balance of this CONTRACT shall be construed and enforced as if this CONTRACT did not contain said void provision. The parties further agree to amend this CONTRACT to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire CONTRACT from being void should a provision, which is of the essence of this CONTRACT, be determined void.

The following statement must be signed and notarized before this Contract will become effective.

STATE OF _____, COUNTY OF _____, SS:

I certify that I am the duly authorized agent of _____,
CONTRACTOR.

I further certify that neither the CONTRACTOR nor anyone subject to his/her direction or control has paid, given or donated, or agreed to pay, give or donate to any board member, officer or employee of the AUTHORITY, any money or other thing of value, either directly or indirectly, to procure award of this CONTRACT.

By: _____

(printed/typed name and title)

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

Notary Public (or Clerk or Judge)

My Commission Expires: _____

Seal:

IN WITNESS WHEREOF, AUTHORITY and CONTRACTOR have executed this CONTRACT;

DATED this _____ day of _____, 20____.

ATTEST

PRINCIPAL

Signed:

Corporate Secretary (where applicable)

Authorized Representative

Name and Title

(Corporate Seal) (where applicable)

Address:

Telephone:

NORMAN UTILITIES AUTHORITY

APPROVED as to form and legality this _____ day of _____, 20____;

AUTHORITY Attorney

Approved by the Trustees of the NORMAN UTILITIES AUTHORITY this _____ day of

_____, 20____.

NORMAN UTILITIES AUTHORITY

ATTEST

By: _____

Title: Chairman

Secretary