

C O N T R A C T

THIS CONTRACT made and entered into this _____ day of _____, 20____, by and between EMC Services, LLC as Party of the First Part, hereinafter designated as the CONTRACTOR, and the City of Norman, a municipal corporation, hereinafter designated as the CITY, Party of the Second Part.

W I T N E S S E T H

WHEREAS, the CITY has caused to be prepared in accordance with law, specifications, and other bidding documents for the work hereinafter described and has approved and adopted all of said bidding documents, and has caused Notice to Bidders to be given and advertised as required by law, and has received sealed proposals for the furnishing of all labor and materials for the following projects:

BID 1920-42 – Vicksburg Channel Liner Replacement

as outlined and set out in the bidding documents and in accordance with the terms and provisions of said CONTRACT; and,

WHEREAS, the CONTRACTOR in response to said Notice to Bidders, has submitted to the CITY on the manner and at the time specified, a sealed proposal in accordance with the terms of this Contract; and,

WHEREAS, the CITY, in the manner provided by law, has publicly opened, examined, and canvassed the proposals submitted and has determined and declared the above-named CONTRACTOR to be the lowest and best Bidder on the above-prepared project, and has duly awarded this CONTRACT to said CONTRACTOR, for the sum named in the proposal, to wit:

(WRITTEN) Three Hundred Ninety-Three Thousand Seventy and 00/100 (DOLLARS);

(NUMERALS) (\$393,070.00).

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

1) The CONTRACTOR shall, in a good and first-class, workman-like 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 the following CONTRACT Documents: The Bid Notice published in the Norman Transcript, the Notice to Bidders, Instructions to Bidders, the Contractor's Bid or Proposal, the Construction Drawings, Specifications, Provisions, and Bonds thereto, all of which documents are on file in the Office of the Purchasing Agent of the City of Norman, and are made a part of this CONTRACT as fully as if the same were set out at length.

2) The CITY shall make payments as stipulated in the contract documents to the CONTRACTOR in the following manner: On or about the first day of each month, the project engineer, or other appropriate person, will make accurate estimates of the value, based on CONTRACT prices, or 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 engineer, 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 the Constitution of the State of Oklahoma, Title 62, Section 310.9.

On completion of the work, but prior to the acceptance thereof by the CITY, it shall be the duty of the project engineer, 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 CITY.

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 retainages) will be approved and paid.

3) It is further agreed that the CONTRACTOR will commence said work within 10 days following receipt of a NOTICE-TO-PROCEED, and prosecute the same vigorously and continuously. The contract period is as follows:

- **COMPLETE BY 120 Days from Notice to Proceed**

4) That the CITY shall pay the CONTRACTOR for the work performed as follows:

- a. Payment for unit price items shall be at the unit price bid for actual construction quantities.
- b. Construction items specified but not included as bid items shall be considered incidental and shall not be paid for directly, but shall be included in the bid price for any or all of the pay quantities.

Should any defective work or materials be discovered or should a reasonable doubt rise 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.

And that the CONTRACTOR'S bid is hereby made a part of this Agreement.

5) That the CONTRACTOR will not undertake to furnish any materials or to perform any work not specifically authorized under the terms of this Agreement unless additional materials or work are authorized by written Change Order, executed by the CITY; and that in the event any additional are provided by the CONTRACTOR without such authorization, the CONTRACTOR shall not be entitled to any compensation therefore whatsoever.

6) That if any additional work is performed or additional materials provided by the CONTRACTOR upon authorization by the CITY, the CONTRACTOR shall be compensated therefore at the unit price and as agreed to by both parties in the execution of the Change Order.

7) That the CONTRACTOR shall perform the work and provide the materials strictly in accordance with the specifications as to quality and kind and all work and materials shall be subject to rejection by the CITY through its authorized representatives for failure to meet such requirements, and in the event of such rejection, the CONTRACTOR shall replace the work and materials without compensation therefore by the CITY.

8) The CONTRACTOR shall complete the work in accordance with the terms of this Agreement. The CONTRACTOR further agrees to pay as liquidated damages as stipulated in the contract document General Conditions for each calendar day thereafter.

9) The CONTRACTOR shall furnish surety bonds and certificate of insurance as specified herein which bonds and insurance must be approved by the CITY prior to issuance of the Work Order and commencement of work on the project. The CONTRACTOR shall provide written documentation from the Maintenance Bond Company that all work,

including Change Orders, is covered by the Maintenance Bond before final acceptance of the project.

10) CONTRACTOR agrees that it shall adhere to equal opportunity employment practices and that all persons employed by CONTRACTOR shall not be discriminated against based upon, and shall be treated equally without regard to or because of: race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the sex, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of Oklahoma, and CITY.

11) CITY and CONTRACTOR agree that the terms and conditions of the Agreement may be reviewed or modified from time to time. Any modifications, however, shall be effective only when agreed upon in writing by both the CITY and CONTRACTOR.

12) Assignments of any or all rights, duties, or obligations of CONTRACTOR or CITY under this Agreement will be permitted only with the express written consent of the other party, which consent may be withheld for any reason. CONTRACTOR and CITY agree that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of CONTRACTOR or CITY, as applicable.

10) IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, in four (4) duplicate originals, the day and year first above written.

13) IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, in four (4) duplicate originals, the day and year first above written.

14) To that end, no provision of this CONTRACT or of any such aforementioned document shall be interpreted or given legal effect to create an obligation on the part of the CITY to third persons, including, by way of illustration but not exclusion, sureties upon performance bonds, payment bonds or other bonds, assignees of 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 CITY or in any way to restrict the freedom of the third person to the CITY or in any way to restrict the freedom of the CITY to exercise full discretion in its dealing with the Contractor.

15) The sworn, notarized statement below must be signed and notarized before this Contract will become effective.

STATE OF Oklahoma)
COUNTY OF Cleveland) ss:

Saul Elizondo, of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by CONTRACTOR to submit the above CONTRACT to the CITY. Affidavit further states that CONTRACTOR has not paid, given or donated or agreed to pay, give, or donate to any officer or employee of the CITY any money or other thing of value, either directly or indirectly, in the procuring of the CONTRACT.

Saul
Contractor

Subscribed and sworn to before me this 6th day of March, 2020.

KAM Alba
Notary Public



IN WITNESS WHEREOF, the said parties of the First and Second Part have hereunto set their hands and seals respectively the _____ day of _____ 20____, and the _____ day of _____, 20____.

(Corporate Seal) (where applicable)

Principal

ATTEST:
Authorized Representative

Signed: _____

Corporate Secretary (where applicable)

Title: _____

Address _____

Telephone: _____

CITY OF NORMAN:

Approved as to form and legality this _____ day of _____ 20____.

City Attorney

Approved by the Council of the City of Norman, this _____ day of _____, 20____.

ATTEST:

City Clerk

Mayor

CONTRACT AFFIDAVIT

STATE OF Oklahoma)
COUNTY OF Cleveland) ss:

Saul Elizondo, of lawful age, being first duly sworn, on oath says that (s)he is the Agent authorized by the Firm of EMC SERVICES LLC to submit the above Contract to the City of Norman, Oklahoma.

Affidavit further states that such firm has not paid, given or donated or agreed to pay, give, or donate to any officer or employee of the City of Norman, Oklahoma, any money or other thing of value, either directly or indirectly, in the procuring of the Contract.

Saul
Contractor

Subscribed and sworn to before me this 6th day of March, 2020

Kaitlin Alba
Notary Public

My Commission Expires:
08-18-2023

