

CONTRACT

THIS CONTRACT made and entered into this _____ day of _____, 20____, by and between _____ 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.

WITNESSETH

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 RFP-1718-48 TREE PLANTING PROJECT FOR MAIN STREET BRIDGE OVER BROOKHAVEN CREEK

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) One hundred twenty one thousand six hundred eighteen ^{. two cents} (DOLLARS);
(NUMERALS) (\$ 121,618.02).

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.

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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:

- **The CONTRACTOR shall have 45 calendar days to complete work.**

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) 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.
- 11) The Contractor hereby represents and warrants to and for the benefit of the Owner that: Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.
- 12) 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.

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

STATE OF Oklahoma)
) ss:
 COUNTY OF Cleveland)

Rusty B. Missom, 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.

Rusty B. Missom
 Contractor

Subscribed and sworn to before me this 7th day of March, 2018.

Margie Keely
 Notary Public



IN WITNESS WHEREOF, the said parties of the First and Second Part have hereunto set their hands and seals respectively the 8th day of MARCH 20 18, 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 8th day of MARCH 20 18.

City Attorney

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

ATTEST:

City Clerk

Mayor

CONTRACT AFFIDAVIT

STATE OF Oklahoma)
) SS:
COUNTY OF Cleveland)

Rusty Brissom, of lawful age, being first duly sworn, on oath says that (s)he is the Agent authorized by the Firm of Brissom Nursery 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.

Rusty Brissom
Contractor

Subscribed and sworn to before me this 7th day of March, 2018.

Margie Keely
Notary Public

My Commission Expires:



NATIONAL AMERICAN INSURANCE COMPANY
CHANDLER, OKLAHOMA
POWER OF ATTORNEY

Number: CBB37916

DUPLICATES SHALL HAVE THE SAME FORCE AND EFFECT AS AN ORIGINAL ONLY WHEN ISSUED IN CONJUNCTION WITH THE ORIGINAL.

KNOW ALL MEN BY THESE PRESENTS: That the National American Insurance Company, a corporation duly organized under the laws of the State of Oklahoma, having its principal office in the city of Chandler, Oklahoma, pursuant to the following resolution, adopted by the Board of Directors of the said Company on the 8th day of July, 1987, to wit:

"Resolved, that any officer of the Company shall have authority to make, execute and deliver a Power of Attorney constituting as Attorney-in-fact, such persons, firms, or corporations as may be selected from time to time.

Resolved that nothing in this Power of Attorney shall be construed as a grant of authority to the attorney(s)-in fact to sign, execute, acknowledge, deliver or otherwise issue a policy or policies of insurance on behalf of National American Insurance Company.

Be It Further Resolved, that the signature of any officer and the Seal of the Company may be affixed to any such Power of Attorney or any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such powers so executed and certified by facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond and documents relating to such bonds to which it is attached."

National American Insurance Company does hereby make, constitute and appoint

Rose Wingate

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred in its name, places and stead, to sign, execute, acknowledge and deliver in its behalf, and its act and deed, as follows:

The authority of said Attorney-in-fact to bind the company shall not exceed \$1,000,000 for any single bond.

And to bind National American Insurance Company thereby as fully and to the same extent as if such bonds and documents relating to such bonds were, signed by the duly authorized officer of the National American Insurance Company, and all the acts of said Attorney(s) pursuant to the authority herein given, are hereby ratified and confirmed.

IN WITNESS WHEREOF, the National American Insurance Company has caused these presents to be signed by any officer of the Company and its Corporate Seal to be hereto affixed.

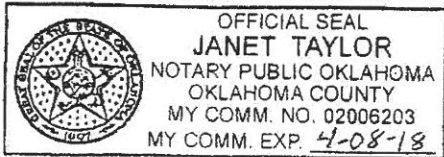


NATIONAL AMERICAN INSURANCE COMPANY

W. Brent LaGere, Chairman & Chief Executive Officer

STATE OF OKLAHOMA)
COUNTY OF LINCOLN) SS:

On this 2nd day of January, A.D. 2014, before me personally came W. Brent LaGere, to me known, who being by me duly sworn, did depose and say; that he resides in the County of Lincoln, State of Oklahoma; that he is the Chairman and Chief Executive Officer of the National American Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name, thereto by like order.



Notary Public
My Commission Expires April 8, 2018
Commission #02006203

STATE OF OKLAHOMA)
COUNTY OF LINCOLN) SS:

I, the undersigned, Assistant Secretary of the National American Insurance Company, an Oklahoma Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force.

Signed and Sealed at the City of Chandler.

Dated the _____ day of _____, _____



Joyce M. Seitz, Assistant Secretary



BOND RIDER

To be attached to and form a part of Bond No. CBB37916, (the "Bond"), Dated March 7, 2018

Grissom Landscape Nursery LLC, as Principal and

National American Insurance Company as Surety, in favor of City of Norman

_____ as Obligee.

Effective as of the effective date of the Bond, the Bond is modified to include the following paragraph:

Notice Prior to Default

Obligee shall notify the Surety in writing at least 20 days prior to declaring a default by Principal. Within a reasonable time following receipt of such notice, if the Principal is in default and if the Obligee has fulfilled its obligations to Principal and Surety under the contract and this Bond, the Surety shall promptly and at the Surety's expense take one of the following actions:

- 1.) Tender a completion agreement to the Obligee, and if the completion agreement is accepted by Obligee, the Surety shall arrange for Principal to perform and complete the Construction Contract; or
- 2.) Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
- 3.) Obtain bids or negotiated proposals from qualified contractors for performance and completion of the Construction Contract; or
- 4.) Waive its rights to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness;
 - (1) either; after investigation, determine the amount which it may be liable to the Obligee and as soon as practicable after the amount is determined, tender payment therefor to the Obligee; or
 - (2) Deny liability in whole or in part and notify the Obligee citing reasons therefor.

Said Bond shall be unmodified except as herein expressly stated. If the provisions of this Bond Rider conflict with any provisions of the Bond, this Bond Rider Controls.

IN WITNESS WHEREOF, **NATIONAL AMERICAN INSURANCE COMPANY** has caused its corporate seal to be hereunto affixed this 7th day of March, 2018.

NATIONAL AMERICAN INSURANCE COMPANY

(SEAL)

BY: Rose Wingate

Rose Wingate

Attorney-in-Fact



BOND RIDER

To be attached to and form a part of Bond No. CBB37916, Dated March 7, 2018
Grissom Landscape Nursery LLC, as Principal and
National American Insurance Company as Surety, in favor of
City of Norman as Obligee.

It is understood and agreed that the bond is changed or revised in the particulars as indicated below:

Increases of 10% or greater to the original bond and/or contract amount must be approved by the surety.

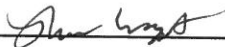
Said Bond shall be subject to all its terms, conditions, and limitations, except as herein expressly modified.

This bond rider shall become effective March 7, 2018.

IN WITNESS WHEREOF, NATIONAL AMERICAN INSURANCE COMPANY has caused its corporate seal to be hereunto affixed this 7th day of March, 20 18.

NATIONAL AMERICAN INSURANCE COMPANY

(SEAL)

BY: 

Rose Wingate

Attorney-in-Fact