

CONTRACT

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

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 project:

NORMAN POLICE AND FIRE INVESTIGATION FACILITY

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: One million three hundred Dollars (\$ 1,325,500.00);
twenty-five thousand five hundred & No/100

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, Instruction 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.

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- 2) The CITY shall make payments minus a retainage of 5% 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 74, Section 3109-3110, and Title 62, Section 310.09.

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 retainage) 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, and complete the same within the number of calendars days listed on the bid form following receipt of said NOTICE-TO-PROCEED.
- a. The Contractor agrees that, in the event the contract is breached through failure of the Contractor to complete the project within time listed on bid form, liquidated damages shall be assessed in the amount of \$250 per day. Liquidated damages shall continue until the project is accepted by the project manager as complete.
- 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 paid quantities.

Should any defective work or materials be discovered or should a reasonable doubt arise at 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 defect are remedied.

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

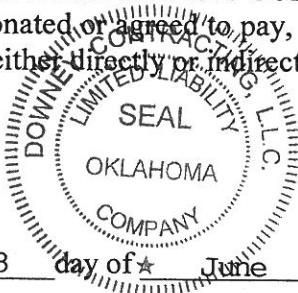
- 5) That the CITY reserves the right to add to or subtract from the estimated quantities or amount of work to be performed up to a maximum of 15% of the total bid price. The work to be performed or deducted shall be at the unit price bid.
- 6) That the CONTRACTOR will not undertake to furnish any materials 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 work are provided by the CONTRACTOR without such authorization, the CONTRACTOR shall not be entitled to any compensation therefore whatsoever.
- 7) That if any additional work is performed or additional materials provided by the CONTRACTOR upon authorization by the CITY, the CONTRACTOR shall be compensated therefor at the unit price and as agreed to by both parties in the execution of the Change Order.
- 8) 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 therefor by the CITY.
- 9) 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.
- 10) 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.
- 11) IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, in three (3) duplicate originals, the day and year first above written.

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 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 CITY or in any way to restrict the freedom of the CITY to exercise full discretion in its dealing with the Contractor.

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

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA)

L.F. Downey, 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. Affiant 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.



Submitted and sworn to before me this 18 day of June, 20 13.

[Signature]
Notary Public

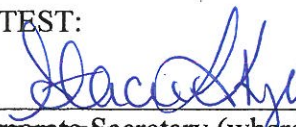
My Commission Expires:

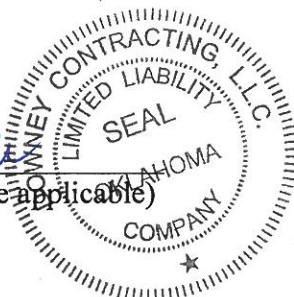
4/7/14 #02003420

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____.

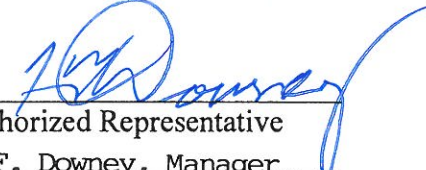
(Corporate Seal) (where applicable)

ATTEST:


~~Corporate Secretary~~ (where applicable)
Witness



Downey Contracting, L.L.C.
Principal

Signed: 
Authorized Representative
L.F. Downey, Manager
Title

Address: 3217 Northeast 63rd Street

Oklahoma City OK 73121

Telephone: 405/478 5277

CITY OF NORMAN

Approved as to form and legality this 25th day of June, 2013.


City Attorney

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

ATTEST:

City Clerk

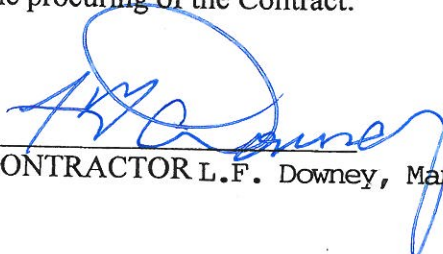
Mayor

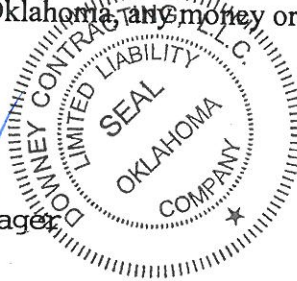
CONTRACT AFFIDAVIT

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA)

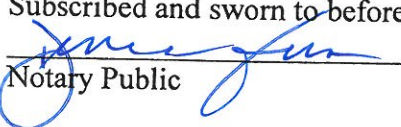
L.F. Downey, of lawful age, being first duly sworn, o oath says that (s)he is the Agent authorized by the Firm of Downey Contracting, L.L.C. to submit the above Contract to the City of Norman, Oklahoma.

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.


CONTRACTOR L.F. Downey, Manager



Subscribed and sworn to before me this 18 day of June, 2013.


Notary Public

My Commission Expires: April 7, 2013.
#02003420