

## CONTRACT AGREEMENT

THIS AGREEMENT is dated as of the \_\_\_ day of \_\_\_\_\_ in the year 2022 by and between \_\_\_\_\_ City of Arkansas City, Kansas \_\_\_\_\_ (hereinafter called OWNER) and \_\_\_\_\_ (hereinafter called CONTRACTOR).

OWNER AND CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### ARTICLE 1. WORK

CONTRACTOR shall complete all WORK as specified or indicated on the PLANS. The WORK is generally described as follows:

#### **SANITARY SEWER RECONSTRUCTION BLOCKS 81 & 82, ARKANSAS CITY, KS**

### ARTICLE 2. ENGINEER

The Project has been designed by Smith and Oakes, Inc., who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the CONTRACT DOCUMENTS in connection with completion of the WORK in accordance with the CONTRACT DOCUMENTS.

### ARTICLE 3. CONTRACT TIME

- 3.1. The WORK shall be completed and ready for service by the dates indicated on the BID FORM.
- 3.2. Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence of this AGREEMENT and that OWNER will suffer financial loss if the WORK is not completed within the times specified in paragraph 3.1 above., ~~plus any extensions thereof justifiably allowed in accordance with Article 12 of the General Conditions.~~ They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the WORK is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the OWNER Six Hundred Dollars (\$600.00) for each calendar day that expires after the time specified in paragraph 3.1 for Substantial Completion until the WORK is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining WORK within the CONTRACT TIME or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER Six Hundred Dollars (\$600.00) for each calendar day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

ARTICLE 4. CONTRACT PRICE

- 4.1 OWNER will pay CONTRACTOR for completion of the WORK in accordance with the CONTRACT DOCUMENTS in current funds as follows:

CONTRACTOR'S UNIT BID is attached.

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment to the ENGINEER for review. Applications for Payment will be processed by the ENGINEER and submitted to the OWNER for Payment as indicated below.

- 5.1. Progress Payments: OWNER will make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by the ENGINEER, on or about the 15th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values established in the BID FORM or, in the event there is no schedule of values, as provided in the General Requirements.

- 5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold as retainage.

90 percent of WORK completed. If WORK has been 50 percent completed as determined by ENGINEER, and if the character and progress of the WORK have been satisfactory to the OWNER and ENGINEER, OWNER on recommendation of ENGINEER, may determine that as long as the character and progress of the WORK remain satisfactory to them, there will be no additional retainage on account of WORK completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the WORK completed.

90 percent of materials and equipment not incorporated in the work (but delivered, suitably stored and accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens, and evidence the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER).

- 5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95 percent of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold.

- 5.2. Final Payment: Upon final completion and acceptance of the WORK, OWNER will pay the remainder of the Contract Price as recommended by the ENGINEER.

#### ARTICLE 6. INTEREST

All moneys not paid when due as provided above shall bear interest at the maximum rate allowed by law at the place of the Project.

#### ARTICLE 7. CONTRACTOR REPRESENTATIONS

In order to induce OWNER to enter into the AGREEMENT, CONTRACTOR makes the following representations:

- 7.1. CONTRACTOR is familiarized with the nature and extent of the CONTRACT DOCUMENTS, work, site, locality, and all local conditions, laws and regulations that in any manner may affect cost, progress, performance or furnishing of the WORK.
- 7.2. CONTRACTOR has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are included in the Contract Documents and accepts the extent of the technical data contained in such reports and drawings upon which the CONTRACTOR is entitled to rely.
- 7.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in 7.2 above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the WORK as CONTRACTOR considers necessary for the performance or furnishing of the WORK at the CONTRACT PRICE, within the CONTRACT TIME and in accordance with the other terms and conditions of the CONTRACT DOCUMENTS, ~~including specifically the provisions of paragraph 4.02 of the General Conditions;~~ and that no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by BIDDER for such purposes.
- 7.4. CONTRACTOR has reviewed and checked all information and data shown or indicated on the CONTRACT DOCUMENTS with respect to existing underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data with respect to said underground facilities are or will be required by CONTRACTOR in order to perform and furnish the WORK at the CONTRACT PRICE, within the CONTRACT

TIME and in accordance with the other terms and conditions of the CONTRACT DOCUMENTS.

- 7.5. CONTRACTOR has correlated the results of such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the CONTRACT DOCUMENTS.
- 7.6. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that has been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by the ENGINEER is acceptable to the CONTRACTOR.

#### ARTICLE 8. CONTRACT DOCUMENTS

The CONTRACT DOCUMENTS which comprise the entire agreement between the OWNER and CONTRACTOR concerning the WORK consist of the following:

- 8.1. Drawings, consisting of a cover sheet and sheets numbered 1 through 14.
- 8.2 This CONTRACT AGREEMENT.
  - 8.2.1. BID FORM.
  - 8.2.2. Any documentation submitted by CONTRACTOR.

There are no CONTRACT DOCUMENTS other than those listed above in the ARTICLE 8.

#### ARTICLE 9. MISCELLANEOUS

- 9.1. All construction shall be to City of Wichita Standard Specifications, latest revision.
- 9.2. No assignment by a party hereto of any rights under or interests in the CONTRACT DOCUMENTS will be binding on another party hereto without the written consent of the party sought to be bound; specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the CONTRACT DOCUMENTS.
- 9.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenant, agreements and obligations contained in the CONTRACT DOCUMENTS.

#### ARTICLE 10. OTHER PROVISIONS

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this AGREEMENT in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the CONTRACT DOCUMENTS have been signed or identified by the OWNER and CONTRACTOR or by ENGINEER on their behalf.

This AGREEMENT will be effective on \_\_\_\_\_

OWNER

CONTRACTOR

City of Arkansas City, Kansas

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Randy Frazer, City Manager

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

City of Arkansas City

\_\_\_\_\_

P.O. Box 778 / 118 W. Central

\_\_\_\_\_

Arkansas City, Kansas 67005

\_\_\_\_\_

License No. \_\_\_\_\_

Agent for service of process:

\_\_\_\_\_

(If CONTRACTOR is a corporation, attach evidence of authority to sign)