

C O N T R A C T

THIS CONTRACT made and entered into this _____ day of _____, 2025, by and between Downey Contracting, LLC, hereinafter designated as "Contractor", and the City of Norman, a municipal corporation, hereinafter designated as "City".

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 said bidding documents, and has caused Solicitation for Bids 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:

ALAMEDA STORMWATER PARK

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 Solicitation for Bids, has submitted to the City, in 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 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 total sum named in the proposal, to wit: One Million Ninety Two Thousand Five Hundred Eighty DOLLARS and Zero CENTS (\$1,092,580.00);

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, workmanlike manner at their 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:
 - i. Specifications, Provisions and Bonds thereto, all of which documents are on file in the office of the City Clerk of the City of Norman, and are made a part of this Contract as fully as if the same were set out at length, with the following additions and or exceptions: (If none, so state.)
 - ii. The Notice to Bidders published in the Norman Transcript January 10 and 17, 2024 ; the Bid No. B-2425-30, containing the instructions to bidders and the special and general provisions of specifications; and the Contractor's bid or proposal; each of said instruments on file in the office of the City Clerk of the City of Norman, are made part of this contract as if fully written in detail herein or attached thereto.

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 obligation 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.

2. The City shall make payments to the Contractor in the following manner:

- i. The project manager, 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, to submit to the City as an application for payment. The Contractor shall furnish to the project manager, or the appropriate person, such detailed information as they may request to aid them as a guide in the preparation of the application for payment. Each estimate and application for payment must contain or have attached an affidavit as required by Senate Bills 469 of the 1974 Legislature. The City will pay Contractor within thirty (30) days of receipt of the application for payment and only after the work contained in the application for payment has been fully completed and has been approved and accepted by the City.
- ii. On completion of all the work, but prior to the acceptance thereof by the City, 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 this Contract and the 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 them 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 estimates to the Contractor; thereupon, the final estimate (including retainages) will be approved and paid within thirty (30) days and only after all the work has been fully completed to the satisfaction of the City.

3. It is further agreed that the Contractor will commence said work within ten (10) days following receipt of a NOTICE-TO-PROCEED, and prosecute the same vigorously and continuously, and complete the same in one hundred eighty (180) calendar days. The City may terminate this Contract for any reason upon thirty (30) days written notice to Contractor.

4. Notice: Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is delivered personally, or within three (3) business days after it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, to:

City:

James Briggs
Park Development Manager
City of Norman Parks & Recreation
225 N. Webster Ave.
Norman, OK 73070

Contractor:

Downey Contracting, LLC

*Correction: Day Zimbelman Dan Zimbelman, Project Manager
3217 NE 63rd Street
Oklahoma City, OK 73121

5. Indemnification: Contractor agrees to indemnify and hold harmless the City, its officers, agents and employees from and against all liability for injuries or death to persons, legal expense or damage to property caused by Contractor's, its agents or employees performance under this Contract; provided, however, that Contractor shall not be liable for injury, damage or loss occasioned by the sole negligence of the City, its agents or employees. Contractor shall indemnify and hold harmless the City, its officers, agents and employees from and against all claims, damages, suits, expenses, liability or proceedings of any kind whatsoever, including, without limitation, Worker's Compensation claims of or by anyone whomever, in any way resulting from, or arising out of, Contractor's acts, omissions or operations under or in connection with this Contract. Further, the City shall not be liable or responsible to Contractor for any loss or damage to any property or person occasioned by a third party. It is understood that this indemnity and hold harmless provision is not limited by the insurance required under this Contract.

6. Insurance: Contractor shall, at its own expense, keep in force insurance of the following types and in not less than the following amounts, issued by a company or companies licensed to do business in Oklahoma and is of sound and adequate financial responsibility, against all liabilities for accidents arising out of or in connection with Contractor's performance of this Contract, except when caused by the City's negligence or that of its agents or employees, and shall furnish to the City certificates evidencing such insurance subject to the limitations set forth above in respect to the City's sole negligence and Contractor shall furnish a certificate to the effect that such insurance shall not be changed or cancelled without ten (10) days prior notice to the City, said notice shall be written and shall be given by Contractor, to wit:

- i. Worker's Compensation Insurance and Employer's Liability Insurance as prescribed by State Statute, for all of Contractor's employees and subcontractors working on the project, with the subcontractors to also provide the same.
- ii. Provide both Commercial General Liability Insurance and Automobile Liability Insurance for personal injury and property damage in limits prescribed by the Oklahoma Governmental Tort Claims Act (51 O.S. § 151 et seq.) and subsequent revisions thereto,

as follows:

- a. \$25,000 for loss of property arising out of a single act or occurrence.
- b. \$125,000 per person for any other loss arising out of a single act or occurrence.
- c. \$1,000,000 for any number of claims arising out of a single act or occurrence.

7. Miscellaneous:

- i. *Counterparts*: This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute the same instrument.
- ii. *Severability*: If any provision of this Contract is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
- iii. *Governing Law; Venue*: This Contract shall be governed and construed in accordance with the laws of the United States of America and the State of Oklahoma. The venue for any action under this agreement shall be in the District Court of Cleveland County, Oklahoma or the United States District Court for the Western District of Oklahoma. The parties agree to submit to the subject matter and personal jurisdiction of said court.
- iv. *Authority*: Each party hereto has the legal right, power and authority to enter into this Contract. Each party's execution, delivery and performance of this Contract has been duly authorized, and no other action is requisite to the valid and binding execution, delivery and performance of this Contract, except as expressly set forth herein.
- v. *Entire Agreement; Amendments*: This Contract and the associated Contract Documents constitute the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- vi. *Assignment*: This Contract shall not be assigned by Contractor without prior written consent of the City.
- vii. *Nondiscrimination*: Contractor acknowledges that the Certification of Nondiscrimination completed with their bid proposal is incorporated herein and thereby agrees to comply with the requirements contained in such certification throughout the performance of this Contract.

- viii. *Non-Waiver*: No failure on the part of either party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either party of any right hereunder preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to either party at law or in equity.
8. The sworn, statement below must be signed and notarized before this Contract will become effective.

[Signatures on following page]

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals respectively as of the date first above written. The parties agree that they may conduct the transaction by electronic means and hereby state that electronic signature is valid and shall have the same force and effect as an original signature.

CONTRACTOR

Corporate Seal (where applicable)

BY: [Signature]
President or Managing Member

ATTEST:

[Signature]
~~Corporate Secretary~~ (where applicable)
Witness

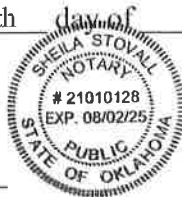
STATE OF OKLAHOMA)

COUNTY OF OKLAHOMA)



Brandon Downey, of lawful age, being first duly sworn, on oath says that (x)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.

Subscribed and sworn to before me this 10th day of June, 2025.



[Signature]
Notary Public

My Commission Expires: 08/02/2025

Commission Number: 21010128

CITY OF NORMAN

Approved as to form and legality this ____ day of _____, 2025.

City Attorney

Approved by the City Council this ____ day of _____, 2025.

Mayor

ATTEST:

City Clerk

PAYMENT AFFIDAVIT

STATE OF OKLAHOMA

P.O. NO. _____

COUNTY OF OKLAHOMA

INVOICE NO. _____

AMOUNT _____

In accordance with the Constitution of the State of Oklahoma Title 62, Section 310.9, this form must be completed and Submitted before any invoice over \$25,000.00 can be processed for payment.

The undersigned contractor, of lawful age, being duly sworn, on oath says that this invoice or claim is true and correct and that (s)he is authorized to submit the invoice pursuant to an approved Contract. Affiant further states that the work, as shown by this invoice, has been completed in accordance with the plans and specifications furnished the Affiant. Affiant further states that (s)he has made no payments, given, or donated or agreed to pay, give or donate, either directly or indirectly, to any elected official, officer or employee of the City of Norman, money or any other thing of value to obtain payment of the invoice or to procure award of this Contract order pursuant to which an invoice is submitted.

Downey Contracting, L.L.C.
Company Name

By: Engineer, or Supervisory Official

Subscribed and sworn to before me this _____ day of _____, 2025.

Notary Public (or Officer having Power to
Administer Oaths)

My Commission Expires: _____

My Commission Number: _____

BID AFFIDAVITS

The following affidavits are to accompany the bid:

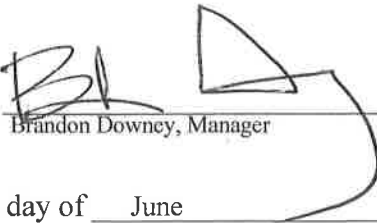
A. Non-Collusion Affidavit

STATE OF OKLAHOMA)

COUNTY OF OKLAHOMA)

Brandon Downey, of lawful age, being first duly sworn on oath says that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any government official or employee as to quantity, quality, or price in the prospective contract, of any other terms of said prospective contract; or in any discussions between bidders and any government official concerning exchange of money or other thing of value for special consideration in the letting of a contract; that the bidder/contractor has not paid, given or donated or agreed to pay, give or donate to any officer or employee of the City of Norman (or other entity) any money or other thing of value, either directly or indirectly in the procuring of the award of a contract pursuant to this bid.

SIGNED:


Brandon Downey, Manager



Subscribed and sworn to before me this 10th day of June, 2025.




Notary Public Sheila Stovall

My Commission Expires: 08/02/2025

My Commission Number: 21010128

B. Business Relationships Affidavit

STATE OF OKLAHOMA)

COUNTY OF OKLAHOMA)

Brandon Downey, of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the nature of any partnership, joint venture, or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the architect, engineer, or other party to the project is as follows:

None

Affiant further states that any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project is as follows:

None

Affiant further states that the names of all persons having any such business relationships and the positions they hold with their respective companies or firms are as follows:

None

(If none of the business relationships herein above mentioned exist, affiant should so state.)

By: Brandon Downey

Title: Manager



Subscribed and sworn to before me this 10th day of June, 2025.



Sheila Stovall
Notary Public Sheila Stovall

My Commission Expires: 08/02/2025

My Commission Number: 21010128

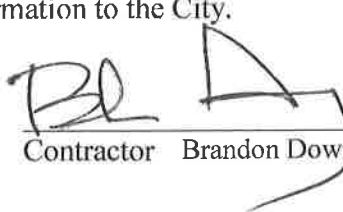
C. **False Information Affidavit**

STATE OF OKLAHOMA)

COUNTY OF OKLAHOMA)

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

This affidavit further states that neither the bidding company nor any other company, owned or previously owned by anyone who is in an ownership or managerial capacity with the bidding company has ever knowingly submitted false information to the City.


Contractor Brandon Downey, Manager



Subscribed and sworn to before me this 10th day of June, 2025.




Notary Public Sheila Stovall

My Commission Expires: 08/02/2025

My Commission Number: 21010128

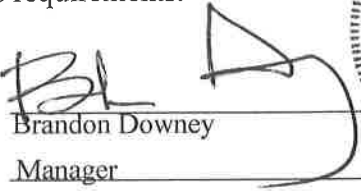
CERTIFICATION OF NONDISCRIMINATION

In connection with the performance of work under this contract, the contractor agrees as follows:

- A. The contractor agrees not to discriminate against any employee or applicant for employment 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 same sex. The Contractor shall take affirmative action to ensure that employees are treated without regard to their 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 same sex. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor and Subcontractor shall agree to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions in this section.
- B. In the event of the Contractor's noncompliance with this nondiscrimination clause, the contract may be canceled or terminated by the City Council. The Contractor may be declared by the City Council ineligible for further contracts with the said agency until satisfactory proof of intent to comply shall be made by the Contractor.
- C. The Contractor agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this agreement.

I have read the above stated clause and agree to abide by its requirements.

By:


Brandon Downey

Title: Manager



Sworn to and subscribed before me this 10th day of June, 2025.


Notary Public Sheila Stovall #21010128



My commission expires: 08/02/2025



June 5, 2025

The City of Norman
201 W Gray St
Norman, OK 73069

RE: Downey Contracting, L.L.C.
Bond #9481659
Project: City of Norman - Alameda Stormwater Park

Dear Sir/Madam:

Please let this letter serve as authorization to date the bonds and powers of attorney for the above-captioned bonds. This authority may be extended by you the owner, or to the architect, or their designated representatives.

Should you have any questions, please feel free to call.

Sincerely,

A handwritten signature in cursive script that reads "Carey L. Kennemer".

Carey L. Kennemer, Attorney-in-Fact for Fidelity and Deposit Company of Maryland