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# MEMO

APPROVED  
12/12/2022



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DATE: December 7, 2022  
FROM: Matney M. Ellis  
Procurement Director  
TO: Board of County Commissioners  
SUBJECT: Agreement – Cherokee Pride Construction

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Bids for the Tulsa County Sheriff's Office Administrative Campus Buildout Flood Plain Grading were opened on November 14, 2022 and the bid award recommendation to Cherokee Pride Construction was approved by the Board of County Commissioners on November 21, 2022, CMF# 20222030.

Submitted for your approval and execution is the attached agreement for project performance between the Board of County Commissioners and Cherokee Pride Construction on behalf of Tulsa County Sheriff's Office for the Administrative Campus Buildout Flood Plain Grading located at 6094 E 66<sup>th</sup> Street North, Tulsa, OK as further described in the attached.

Respectfully submitted for your approval and execution.

MME / jdf

SUBMITTED FOR: The December 12, 2022 BOCC meeting agenda.

CMF# 20222159



## Tulsa County Contract for Project Performance

**THIS AGREEMENT** made and entered into by and between the Board of County Commissioners of Tulsa County, Oklahoma, a political subdivision of the State of Oklahoma, and hereinafter referred to as "County", and

Cherokee Pride Construction, located at the following address:  
PO Box 28  
Sapulpa, OK 74067

hereinafter referred to as "Contractor".

That for and in consideration of the mutual terms, covenants and conditions hereinafter set forth, the parties agree as follows:

**1. Recitals.** The County has heretofore called for bids for TCSO Campus Buildout – Flood Plain Grading, hereinafter referred to as the "Project", same to be in accordance with the plans and specifications therefore prepared by

Tulsa County Sheriff's Office Administrative Campus, located at the following address:  
6094 E 66<sup>th</sup> Street North  
Tulsa, OK

hereinafter referred to as "TCSO Campus".

Pursuant to advertisement for bids, the sealed bid proposal of Contractor was duly received and publicly opened on the date and at the time and location prescribed in the Notice to Bidders, and bidder names read aloud as were all other bids duly received. The bid of Contractor is now on file in the County Clerk and is incorporated herein and made a part hereof by reference, as fully as if copied at length herein. By order and direction of the Board of County Commissioners of Tulsa County, Oklahoma, all bids received for this project were filed and examined to determine the lowest responsible bid. Thereafter, on November 21, 2022, at a regular meeting of the Board of County Commissioners of Tulsa County, Oklahoma, the Contractor's bid was accepted as the lowest responsible bid for said construction. Contractor admits that he has visited the site of the project and that the plans and specifications are sufficient to accomplish their intended purposes, to which Contractor does agree and warrant. This contract, together with the plans and specifications, general terms and conditions of the bid packet, Contractor's bid and any other documents hereinafter identified, constitutes the entire agreement between the parties hereto.

## 2. Safety

**2.1** The Contractor agrees that the prevention of accidents to workmen and property engaged upon or in the vicinity of the Trade Work is its responsibility. The Contractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the Trade Work, including, among others, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established during the progress of the Trade Work by the County or County's Representative (referred to herein as "CR").

County's Representative for the above-mentioned Project is:

Brad Johnson, located at the following address:  
300 North Denver Ave.  
Tulsa, OK 74103

**2.2** When so ordered, the Contractor shall stop any part of the Trade Work which the CR deems unsafe until corrective measures satisfactory to the CR have been taken. The Contractor agrees that it shall not have nor make any claim for damages arising from such stoppages. Should the Contractor fail to take appropriate corrective measures in a timely manner, the CR may do so at the cost and expense of the Contractor and may deduct the cost and expense thereof from any payments due or to become due to the Contractor. Failure on the part of the CR to stop unsafe practices shall in no way relieve the Contractor of its responsibility therefor.

**2.3** The Contractor will follow the provisions of all applicable statutes and ordinances which require persons or firms doing excavation to do so only after giving notice to utility companies and obtaining information on the location of utilities (such as "one-call" systems).

CMF# 20222159

### **3. Contractor Representations**

**3.1** The Contractor acknowledges receipt of all policies and requirements of the Tulsa County Procurement General Terms & Conditions as well as any and all documents referenced in the attached Scope of Work (Exhibit A). Subject to applicable law the Contractor further agrees to be bound by these policies as part of this Agreement. The Contractor represents and agrees that it has carefully examined and understands this Agreement and the other Trade Contract Documents, has investigated the nature, locality and site of the Trade Work and the conditions and difficulties under which it is to be performed, and that it enters into this Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the CR, the County or any of its respective officers, agents or employees.

**3.2** The commencement of the Trade Work by the Contractor on the site of the Project shall not commence until this Agreement has been signed by both parties and the Contractor has received a Notice to Proceed from the County.

### **4. Bonds**

**4.1** The Contractor shall furnish a Performance Bond and a Separate Payment Bond satisfactory to the CR, in its sole determination, in the full amount of the Agreement Amount. Bonds shall be furnished by a surety acceptable to the CR, in the full amount of the Agreement Amount. Contractor must also furnish any applicable statutory bonds if required by the state in which the Project is located. All bonds shall be on the forms prescribed by Tulsa County and attached as Exhibit B.

**4.2** Contractor's performance bond, statutory defect bond, payment bond, and all insurance policies, (as required in the bid packet) shall be submitted to the County for approval by the District Attorney concurrently with the submission of this agreement. This contract shall be of no force or effect until all such bonds, insurance policies and/or insurance certificates required herein and in the contract documents are submitted to the District Attorney's office and there approved as to form and content and placed on file in the office of the County Clerk of Tulsa County. Upon approval of the bonds, insurance policies, and/or insurance certificates required herein and the contracts due execution and filing, the Contractor's bid bond shall be released.

**4.3** Contractor shall submit all bonds, insurance policies and/or insurance certificates required in the plans and specifications and in the general conditions and contract documents and shall do no work on this project until the same have been approved by the County. The Contractor shall purchase and maintain property insurance, if required, upon the entire work at the site to the full insurable value thereof. This insurance shall include the interest of the County, the Contractor, Subcontractors and Sub-subcontractors in the work and shall insure against the perils of fire, extended coverage, vandalism and malicious mischief.

**4.4** Contractor shall at all times save and hold the County harmless from any damage, loss or expense due to the performance of this contract and/or Contractor's operation hereunder. It is further understood and agreed that if any part of Contractor's work depends upon the work of any other contractor, firm, or person, other than one of the Contractor's sub-contractors, Contractor shall inspect and promptly report to County and/or CR any and all defects of such work as would render it unsuitable for proper performance under this contract. The term "Work" shall mean labor and materials and/or the furnishing and performance thereof. Failure by Contractor to inspect and report any such deficiency by any contractor other than one of his sub-contractors as not being fit, adequate and proper work for the reception of the work to be done by Contractor shall not excuse Contractor from timely, due and proper performance of his work under this contract, and this clause shall not be construed or interpreted as relieving the Contractor of any and/or the primary responsibility hereunder to report such deficiency.

### **5. Contractor Duties**

**5.1 Trade Work.** The County retains the Contractor as an independent contractor, to provide all labor, materials, equipment and services necessary or incidental to complete that portion of the work on the Project as set forth in Exhibit A to this Agreement, consistent with the Project Schedule as defined in Section 6 and in strict accordance with and reasonably inferable from the Trade Contract Documents. The Contractor agrees to perform Trade Work for the Project under the general direction of the CR and subject to the final approval of the CR, Architect/Engineer or other specified representative of the County.

**5.2 Trade Contract Documents.** The Trade Contract Documents include this Agreement, Bid Packet, including all addenda, modifications, revisions, plans, drawings, specifications, details, together with all general, technical, supplementary and special terms and conditions, any invitations for bids or information for bidders, if any, to the extent applicable. The County and the Contractor are mutually bound by the terms of this Agreement. This Agreement and the rest of the Trade Contract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. However, if any provision of this Agreement irreconcilably conflicts with a provision of the Trade Contract Documents, the provision granting greater rights or remedies to the County or imposing the greater duty, standard or responsibility or obligation on the Contractor shall govern.

**5.3 Design Delegation.** If the Trade Contract Documents (1) specifically require the Contractor to provide design services and (2) specify all design and performance criteria, the Contractor shall provide the design services necessary to satisfactorily complete the Trade Work. Design services provided by the Contractor shall be procured from licensed, design professionals (the "Designer") retained by the Contractor as permitted by the law of the place where the Project is located. The Designer's signature

and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by the Designer. Shop Drawings and other submittals related to the Trade Work designed or certified by the Designer, if prepared by others, shall bear the Contractor's and the Designer's written approvals when submitted to the CR. The County and the CR shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer.

**5.3.1** If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Contractor and the Designer. The Contractor-Designer agreement shall not provide for any limitation of liability or exclusion from participation in the multiparty proceeding's requirement of Paragraph 21.6. If applicable, the Designer(s) is (are):

Lilly Architects, located at the following address:  
203 North Main St. #213  
Tulsa, OK 74103

The Contractor shall notify the CR in writing if it intends to change the Designer. The Contractor warrants the design furnished by the Designer will be in conformance with the information given and the design concept expressed in the Trade Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Trade Contract Documents furnished by the County, Architect/Engineer or CR.

**5.3.2** The Contractor shall not be required to provide design services in violation of any applicable law.

**5.4 Clean Up.** The Contractor is responsible for its own "clean-up" and keeping the Trade Work areas "broom clean". If the CR determines the Trade Work area to be unsatisfactorily cleaned, the CR will so advise the Contractor. If the Contractor fails to commence cleaning procedures within twenty-four (24) hours and continue to clean said area to the CR's satisfaction, the CR may without further notice execute and complete such clean-up activities as the CR deems necessary and charge the cost to the Contractor or deduct such cost from payments due to the Contractor. The Contractor is responsible to clean the mud and gravel off its vehicles (including vehicles operated by its lower tier contractors and suppliers) prior to leaving the site. Any mud or gravel that is tracked onto the surrounding roads shall be removed immediately. The CR has the right to clean up surrounding roads immediately upon the Contractor's failure to do so, the cost of which shall be deducted from the Contractor's next payment.

**5.5 Protection of Trade Work.** The Contractor is responsible for protection of its material, equipment and installation until the final acceptance by the County and/or the Architect.

**5.6 Protection of the Project.** The Contractor shall confine operations at the Project site to areas permitted by the CR and shall not unreasonably encumber the Project site with materials or equipment. The Contractor is responsible for any damage caused to adjacent property or access roads by the Contractor, its lower tier contractors or suppliers during the course of the Trade Work.

**5.7 Supervision.** All of the Trade Work is the sole and absolute responsibility of the Contractor; shall be initiated, managed, performed and completed by qualified, competent, skilled and reputable supervisors, administrators, mechanics and laborers, all of which are satisfactory to the CR; shall be in full compliance with the Trade Contract Documents including this Agreement; and shall meet the approval and acceptance of the CR and/or the County.

**6. Schedule.** Time is of the essence. It is understood and agreed that Contractor shall, within 10 days after receipt of a Notice to Proceed, commence the performance of this contract, and shall thereafter diligently prosecute such performance until completion of same. In any event, Contractor shall complete construction and performance of this contract within 75 days, in accordance with the bid proposal of Contractor, and pursuant to the conditions stipulated in the general conditions.

Contractor shall at all times be represented at the site of the project by a competent foreman or superintendent satisfactory to CR and/or County. Said representative shall have authority to act for the Contractor in all respects and in all matters concerning the work and performance of this contract, and any commitment, action or representation made by said agent shall be fully binding upon Contractor as fully as if made by it. All work shall be performed in a good and first-class, workmanlike manner in strict accordance with the said plans and specifications.

## **7. Payment**

**7.1** In consideration of faithful and timely performance by the Contractor of all the covenants and the conditions aforesaid, the County agrees to pay the Contractor, subject to other provisions hereof, including authorized additions and deletions, the sum of \$188,000.00, (the "Agreement Amount"). Payment shall only be due for the portion of the Trade Work actually completed to the satisfaction of the CR, the Architect/Engineer and/or the County. Contractor will submit a Progress Payment Application on AIA Document G702 and G703 to the County, the CR and/or the Architect/Engineer, for Contractor Work properly performed during

that month. Within thirty (30) days after Contractor's complete, proper and timely payment application has been received by the County, the County shall make payment to Contractor, less any applicable retainage or other set off. The County may withhold payment of part or all of Contractor's payment application upon notice to Contractor as allowed by law. Progress payment applications must be submitted by the Contractor each month in an amount equal to ninety-five percent (95%) of the estimated value of the labor, materials and equipment incorporated in the construction and materials and equipment suitably stored at the Project site, less the aggregate of previous payments. The Affidavit for Contracts & Payments (Exhibit C) and Contractors Release & Waiver of Lien (Exhibit D) for prior payments must be properly executed by an authorized representative of the Contractor and returned to the County and the CR prior to issuance of subsequent payments.

**7.2** With each progress payment application, the Contractor shall furnish a tabulated breakdown of the portion of the Trade Work included in the payment request, listing items of the work in sufficient detail as determined by the County, CR and/or Architect/Engineer to easily facilitate payment requests to be checked by the CR as the work progresses.

**7.3** Each payment request or invoice must be received by the County by the last day of the month to be processed with other progress payment applications for that month. Invoices and payment requests received that are inaccurate or without substantiation, or after said day of the month will be held until corrected and substantiated, and then processed with the following month's payment application.

**7.4** The Contractor shall submit its request for partial payment conforming to the Progress Payment Application, with schedule of values attached thereto, representing a true and accurate estimate of the Trade Work completed, and materials stored during the immediately preceding month or such other immediately preceding period as directed by the County and/or the CR. In addition, if allowed by the Trade Contract Documents, all invoices and insurance certificates shall be included for all stored materials in an off-site storage area applicable to the payment request.

**7.5** If the County or the CR on behalf of the County, in their sole discretion, deem it necessary, the Contractor agrees to receive each of its progress payments and final payment in the form of multiple checks issued jointly between the Contractor's lower tier contractors and major material suppliers and the Contractor. Lower tier contractors that are to receive part or all of their progress payments as joint checks shall additionally submit with their Payment Requests all invoices from each lower tier contractor and major supplier and the net payments to be issued to each.

**7.6** No partial payment, or certificate therefore, shall constitute acceptance or approval by the County, the CR or the Architect/Engineer of the Trade Work or material for which the partial payment is made. No partial payment shall constitute a waiver by the County of any right to require fulfillment of all the terms of this Agreement. Neither the final payment nor any partial payment, nor any certificate for either, shall constitute acceptance by the County of defective work or improper materials or of any element of the Contractor's performance determined to be at variance with this Agreement.

**7.7** The County shall have the right to set off any amounts the Contractor owes to the County under this Agreement or by law against the remaining balance under this Agreement, or against any amounts due the Contractor under any other agreements with the County.

**7.8 Final Payment.** Final payment by the County to the Contractor shall not become due and payable to the Contractor until the following express conditions precedent have been met: (1) The completion of the Trade Work required by this Agreement and acceptance of the Trade Work by the CR, the County and/or the Architect/Engineer; (2) execution and delivery by the Contractor, in a form satisfactory to the CR, of a general release running to and in favor of the County; and (3) complete and full satisfaction of all claims, demands, disputes and obligations of the Contractor arising out of or related to this Agreement, including those between the County and the Contractor and between the Contractor and any third party. Should there be any such claim, lien or unsatisfied obligation, whether before or after final payment is made, the Contractor shall deliver payment to the County an amount equal to whatever cost the County must pay to discharge or defend against any such claim, obligation, lien or action brought, or any judgment thereon and all costs, including legal fees and expenses and a 15% Administrative Fee, incurred in connection therewith.

**8. Hazardous Materials.** The Contractor shall at all times comply with all rules and regulations of any municipality, state or federal environmental protection, and toxic waste and hazardous substances laws, ordinances and regulations, and how they relate to the Trade Work, and shall be equally responsible for actions and inactions of Contractors, lower tier contractors, and any other agents or independent contractors of the Contractor. The Contractor shall be deemed to, and shall, have included in the Agreement Amount the containment, removal, disposal or neutralization of all toxic wastes and hazardous substances created, generated or transported to or from the Project site in conjunction with the Trade Work. The Contractor will be responsible for identifying toxic wastes and hazardous substances generated, released, caused by or resulting from the Trade Work and notifying the CR and/or County of its presence in writing as soon as it is identified. The terms "toxic wastes" and "hazardous substances" shall have the same meaning as defined under federal environmental laws and regulations. At all times the Contractor shall defend, indemnify and hold harmless the County and the CR from any and all expenses, costs, damages, suits, fines, assessments,

penalties and/or causes of action, including attorney's fees through all investigations, negotiations, hearings or appeals, relating to or arising out of the Contractor's failure to strictly comply with the terms of this paragraph.

## **9. Compliance with Laws**

**9.1** The Contractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations (the "Laws") applicable to the Trade Work, including but not limited to safety, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, sexual and racial harassment, and all other Laws with which the County must comply.

**9.2** Where prescribed by Law pursuant to direct Federal contracts or Federally-financed or aided contracts, or otherwise required by Law, the Contractor agrees the following clauses found in the Trade Contract Documents or in the Code of Federal Regulations (CFR) are incorporated in this Agreement and binding on Contractor as if written herein word for word: the clauses entitled "Equal Opportunity Clause" (41 CFR Sections 60-1.4 & 60-4.3); "Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans of the Vietnam Era" (41 CFR Section 60-250.4); "Affirmative Action Obligations of Contractors and Subcontractors for Handicapped Workers" (41 CFR Section 60-741.1); "Contract Work Hours and Safety Standards Act-Overtime Compensation"; "Apprentices and Trainees"; "Payrolls and Basic Records"; "Compliance with Copeland Act Requirements"; "Withholding"; "Subcontracts"; "Contract Termination-Department"; "Disputes Concerning Labor Standards"; "Compliance with Davis-Bacon and Related Act Requirements"; and "Certification of Eligibility" and such other clauses as the Federal Government has required by law or contract. Contractor agrees to include all such clauses in any non-exempt, lower-tier contracts.

**9.3 Immigration Compliance.** The Contractor represents and warrants that the Contractor is in compliance with, and shall remain in compliance with, the provisions of the Immigration Reform and Control Act of 1986 (The "Act") and all other Federal, State, and/or local immigration statutes/ordinances, as applicable, including, but not limited to the provisions of the Act prohibiting hiring and continued employment of unauthorized aliens, requiring verification and record keeping with respect to identity and eligibility for employment and prohibiting discrimination on the basis of national origin, United States citizenship, or intending citizen status. The Contractor agrees to indemnify the County and to hold the County and the CR harmless from all liability, including liability for interest and penalties, the County and/or the CR incurs with results from or is attributable to the Contractor's failure to comply with any provisions of the Act, and or applicable Federal, State, and/or local immigration statute/ordinance, including reimbursing the County and the CR any monies expended by either of them in participating in or responding to any investigation/suit/civil or criminal immigration matter involving the Contractor. As it relates to immigration compliance, the Contractor shall be responsible for completing any and all required documentation in accordance with requirements put forth by the County, CR or applicable law.

**9.4** The Contractor shall be liable to the County for all loss, cost and expense attributable to any acts of commission or omission by the Contractor, its contractors at any tier, and its and their respective employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties

## **10. Insurance**

**10.1** The Contractor agrees to procure, pay for and maintain in full force and effect during the course of the performance of the Agreement all insurance required by the laws of the state of Oklahoma, and in such form and amounts as described in Exhibit E which is attached hereto and incorporated into this Agreement. The Contractor shall not commence the Trade Work nor receive any payment hereunder until Certificate of such insurance is furnished to the County.

**10.2** The County and/or the CR shall have no duty to the Contractor or to any of its insurers or their insurance agents to review any certificates or copies of insurance furnished to the County or the CR or to determine whether the terms of each certificate or policy of insurance comply with the insurance-related provisions of the Agreement. A failure of the County and/or the CR to detect that the Contractor has not submitted certificates, or proper certificates, or is otherwise not in compliance with the insurance-related provisions of the Agreement shall not be construed as a waiver or other impairment of any of the Counties' and/or CR's rights under such insurance-related provisions.

**10.3** If the Contractor fails to procure and maintain such insurance, in addition to the option of declaring the Contractor in default for breach of a material provision of this Agreement, the County shall have the right, but not the duty, to procure and maintain the same insurance, or other insurance that provides the County equivalent protection, and the Contractor shall furnish all necessary information to make effective and maintain such insurance. At the option of the County, the cost of said insurance purchased by the County shall be charged against and deducted from any monies then due or to become due to the Contractor or the County shall notify the Contractor of the cost thereof and the Contractor shall promptly pay such cost.

**10.4** The Contractor shall identify by certificate any Residential, Mold, EIFS, Silica or other major exclusions that impact the Contractor's ability to insure its risk. If the Project includes any Residential components or the proposed design includes EIFS systems, then the Contractor shall obtain appropriate endorsements acceptable to the County as a condition of this Agreement.

**10.5** The Contractor shall at its own expense provide insurance coverage for materials stored off the site after written approval of the County at the value established in the approval, and also for portions of the Trade Work in transit until such materials are permanently incorporated into the Project. The risk of loss for material and equipment provided by this Agreement, whether in a deliverable state or otherwise, shall remain with the Contractor. Any damages to the material and equipment or loss of any kind occasioned in transit shall be borne by the Contractor, notwithstanding the manner in which the goods are shipped or who pays the freight or other transportation costs.

## **11. Indemnity**

**11.1 General Indemnity.** To the fullest extent allowed by law, the Contractor shall defend, indemnify and hold harmless the CR, the County's other Contractors, the Architect/Engineer, the County and their agents, consultants, members and employees (the Indemnitees) from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, costs and expenses for bodily injury and property damage that may arise from the performance of the Trade Work to the extent of the negligent acts or omissions by, or the fault of, the Contractor, the Contractor's lower tier contractors or anyone employed directly or indirectly by any of them or by anyone for whose acts or omissions any of them may be liable. The Contractor agrees to purchase and maintain contractual liability insurance covering its obligations in this article. These obligations shall not be interpreted to reduce or negate any other rights or obligations of indemnity otherwise existing with regard as to any party or person described in this Article.

**11.2 Patents.** The Contractor hereby agrees to defend, indemnify and hold harmless the County and the CR from and against any and all liability, loss or damage and to reimburse the CR and the County for any costs, including legal fees and expenses, which the County and the CR may incur because of claims or litigation on account of infringement or alleged infringement of any letters patent or patent rights by reason of the Trade Work, or materials, equipment or other items used by the Contractor in its performance.

**11.3 No Limitations.** In furtherance to, but not in limitation of the indemnity provisions in this Agreement, the Contractor hereby expressly and specifically agrees that its obligation to indemnify, defend and hold harmless as provided in this Agreement shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws.

**12. Termination for Convenience.** The County shall have the right at any time by written notice to the Contractor, to terminate this Agreement without cause and require the Contractor to cease work. In the event of such a termination for convenience, the Contractor shall be entitled to payment pursuant to the terms of the Agreement for the portion of the Trade Work actually completed as of the date of termination, together with reasonable costs of demobilization and such other reasonable costs as may be encountered by the Contractor and directly attributable to such termination provided that such amount may be reduced by all amounts for which the Contractor is liable or responsible. However, the Contractor shall only be entitled to profit on that portion of the work actually completed and approved for payment to the date of termination together with retainages withheld from prior payments. The Contractor waives any claim for loss of anticipated profits or other damages against the County and/or the CR in the event the County exercises this clause.

## **13. Failure of Performance**

**13.1 Non-Conforming Trade Work.** The Contractor shall provide sufficient, safe and proper facilities at all times for inspection by the Architect/Engineer, the County and/or the CR of the Trade Work in the field, at shops or at any other place where materials required hereunder are in course of preparation, manufacture, treatment or storage. The Contractor shall, within twenty four (24) hours after receiving written notice from the County and/or the CR to that effect, proceed to remove from the site any materials condemned by the Architect/Engineer, the County, or the CR, whether worked or unworked, and to take down all portions of the Trade Work which the Architect/Engineer, the County or the CR has condemned in writing, as unsound or improper, or as in any way failing to conform to the drawings, specifications and addenda and shall take full financial responsibility for all damage caused by such removal. In the event that all or any portion of the Trade Work as condemned should be of such a nature, or the time available should be so limited, that in the judgment of the Architect/Engineer, the County or the CR it would not be expedient to order the same replaced or corrected, the County, at its option, may deduct from the payments due or to become due to the Contractor such amount or amounts as in the opinion of the Architect/Engineer, the CR or the County shall represent the difference between the fair and reasonable value of the Trade Work so condemned and its value had it been executed in conformity with the Trade Contract Documents.

**13.2 Notice to Cure.** If the Contractor is unable, refuses or fails to supply enough properly-skilled workers, proper materials, correct non-conforming Trade Work, or maintain the Schedule of Work, or fails to make prompt payment to its workers, Contractors

or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Contractor shall be deemed in default of this Agreement. If the Contractor fails within three (3) business days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the County without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

**13.2.1** to supply workers, materials, equipment and facilities as the County deems necessary for the completion of the Trade Work or any part which the Contractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Contractor;

**13.2.2** to contract with one or more additional contractors to perform such part of the Trade Work as the County and/or the CR determines will provide the most expeditious completion of the Trade Work, and charge the cost to the Contractor; and/or

**13.2.3** withhold any payments due or to become due the Contractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the County and the CR.

**13.2.4** terminate the Contractor for default by delivering written notice of such termination to the Contractor.

**13.2.5** to charge to the Contractor an Administrative Fee of 15% of all costs incurred by the County and/or the CR in exercising any of the above remedies.

In the event of an emergency affecting the safety of persons or property, the County and/or the CR on behalf of the County may proceed as above without notice, but the County shall give the Contractor notice promptly after the fact as a precondition of cost recovery.

**13.3 Termination for Default.** If the Contractor has been terminated for default, the County may take possession of the Project and Trade Work, materials, tools, appliances and equipment of the Contractor at the Project site, and through itself or others provide labor, equipment and materials to prosecute Trade Work on such terms and conditions as shall be deemed by the County as necessary, and shall deduct the cost, including without restriction all claims, charges, expenses, losses, costs, damages, and attorneys' fees, incurred as a result of the Contractor's failure to perform, from any money then due or thereafter to become due to the Contractor under this Agreement.

**13.3.1** If the County so terminates the employment of the Contractor, the Contractor shall not be entitled to any further payments under this Agreement and no sum shall be deemed due or to become due to the Contractor until Trade Work has been completed and accepted by the County and all Agreement requirements have been fulfilled. In the event the unpaid Agreement Amount earned by Contractor exceeds the cost of completion and any and all incidental costs, including administrative, legal and other professional fees, the difference shall be paid to the Contractor, but if such expenses exceed the unpaid earned Agreement Amount, the Contractor agrees to pay the difference to the County promptly.

**13.3.2** If it is determined or agreed that the County wrongfully exercised any option under this Article, the County shall be liable to the Contractor solely for the reasonable value of Trade Work performed by the Contractor prior to such action, including reasonable overhead and profit on the Trade Work performed, less prior payments made. Under no circumstances shall the Contractor be entitled to recovery of claimed lost future profits.

## **14. Delays**

**14.1** Should the progress of the Trade Work be delayed, obstructed or interfered with through any fault, action or failure to act by the Contractor or any of its officers, agents, employees, Contractors or suppliers so as to cause any additional cost, expense, liability or damage to the CR or the County, including legal fees or expenses incurred in defending claims arising from such delay or seeking reimbursement and indemnity from the Contractor and its surety hereunder, the Contractor and its surety agree to compensate and indemnify the CR and the County against all such costs, expenses, damages and liabilities.

**14.2** In addition, the Contractor, at the County and/or CR's direction and at the Contractor's own cost and expense, shall work such overtime as may be necessary to make up for all time lost in the completion of the Trade Work and in the completion of the Project due to such delay. If the Contractor fails to make up for the time lost by reason of such delay, the County and/or the CR has the right to use other Contractors or suppliers and to take whatever other action the County and/or CR deems necessary to avoid delay in the completion of the Trade Work and the Project, the cost of which shall be borne by the Contractor.



**14.3** If the commencement and/or progress of the Trade Work is delayed without the fault or responsibility of the Contractor, the time for the Trade Work shall be extended by Change Order to the extent obtained from the County and the Schedule of Work shall be revised accordingly.

## **15. Changes**

**15.1 Trade Work Changes.** The County and the Contractor agree the County may make changes to the Trade Work, including but not limited to; additions, deletions or revisions. Any changes made to the Trade Work involved, or any other parts of this Agreement, shall be by a written Change Order (Exhibit F). To the extent that any such change impacts Contractor's cost of or time for performance, the Agreement Amount and Agreement Schedule shall be equitably adjusted to compensate for such impact. Changes shall be initiated by one of the three methods outlined below and shall be incorporated into the Agreement by a Change Order.

**15.1.1 Request for Change Proposal.** A Request for Change Proposal (RFCP) is a written request that informs Contractor about a potential change in the Trade Work and requests a proposal for the potential change. Contractor shall promptly reply with such request. Contractor shall not implement the change or incur any costs until a Change Order is fully executed.

**15.1.2 Construction Change Directive.** A Construction Change Directive (CCD) is a written directive that instructs Contractor to take some immediate action in connection with the Trade Work. CCDs are issued when there is not time to issue a RFCP or Change Order. Contractor shall immediately proceed so as not to delay the progress of the Work and in accordance with the terms of the CCD. Any impact of a CCD on the Contract Price or Schedule shall be adjusted by a Change Order.

**15.1.3 Change Order Requests.** Within seven (7) calendar days after the occurrence of any event or observance of any condition that Contractor believes entitles Contractor to an adjustment in Agreement Amount and/or Agreement Schedule, Contractor shall prepare and submit a Change Order Request (COR) to County and/or the CR. The COR shall include a detailed factual narrative, a detailed analysis showing entitlement and a detailed analysis of the proposed change to the Agreement Amount and/or Agreement Schedule.

**15.2 Change Orders.** A Change Order (CO) is a written instrument prepared by the County or the CR and signed by the Contractor stating their agreement with the change in the Trade Work and any adjustment to the Agreement Amount and/or Agreement Work Schedule. All changes and/or additions in the Trade Work ordered in writing by the County or CR shall be deemed a part of the Trade Work and shall be performed and furnished in strict accordance with all terms and conditions of this Agreement and the Trade Contract Documents, including the current Schedule of Work.

Change Orders will be used to implement approved Requests for Change Proposals, Construction Change Directives and Change Order Requests. Upon receipt of a properly documented COR or CCD, the parties shall negotiate in good faith to determine if the Contractor is entitled to a Change Order and, if so, the appropriate equitable adjustment. Any adjustment to the Agreement Amount shall be established by one of the following methods:

- a. mutual acceptance of an itemized lump sum; or
- b. unit prices as indicated in the Trade Contract Documents or as subsequently agreed to by the parties; or
- c. costs determined in a manner acceptable to the parties and a mutually acceptable fixed or percentage fee; or
- d. another method provided in the Trade Contract Documents.

If the Parties are unable to agree on the dispositions of a COR or CCD, CR or County will either (i) issue a Notice denying Contractor's request or (ii) issue a unilateral Change Order setting forth the final determination regarding the adjustments. Any cost and schedule adjustments shall be a full accord and satisfaction for all cumulative impacts of the underlying change.

**15.3** The Contractor shall not be entitled to receive additional compensation for extra work or materials or changes of any kind except to the extent the same was ordered by the County. The Contractor shall be responsible for any costs incurred by the County or the CR for changes of any kind made by the Contractor that increase the cost of the Work for either the County, the CR or other Contractors when the Contractor proceeds with such changes without a Change Order or Construction Change Directive.

**15.4 Determination by County, CR or Architect/Engineer.** Notwithstanding any other provision, if the Trade Work for which the Contractor claims additional compensation is determined by the County, the CR or Architect/Engineer not to entitle the Contractor to a Change Order, additional compensation or a time extension, the County and the CR shall not be liable to the Contractor for any additional compensation or time extension for such Trade Work, unless the County agrees in writing to pay such additional compensation or to grant such extension.

## **16. Claims**

**16.1** A Claim is a written demand by Contractor seeking an adjustment in the Agreement Amount and/or Agreement Schedule or some other relief under the terms of the Agreement for events other than a RFCP that has been denied in writing. Contractor shall provide Notice to the County and the CR of any potential Claim within seven (7) calendar days after the event giving rise to the Claim. Within fifteen (15) calendar days thereafter, Contractor shall submit a detailed factual narrative, a detailed analysis showing entitlement and a detailed analysis of the alleged change to the Agreement Amount and/or Agreement Schedule. Claims not timely made, in writing, by the Contractor shall be deemed to have been abandoned and waived. The acceptance and consideration of any claim out of time by the County shall not create any precedent nor "course of dealing" between the County and the Contractor, nor shall it waive the County's right to insist on strict adherence by the Contractor to the contract claims procedures. If County denies Contractor's Claim, Contractor may pursue the matter under Article 21 Dispute Resolution.

**16.2** The Contractor shall not delay or suspend the Trade Work because of the pendency of or the denial by the County of any such claim or because of the continuance of the condition out of which the claim arose but shall proceed diligently in performing the Trade Work while the claim is being resolved by agreement or being fully adjudicated.

**16.3** In the event the Contractor asserts that it should receive additional compensation because of an act or omission on the County's part, or someone for whom the County is responsible, the Contractor shall promptly submit the claim to the County and the CR in writing within the time required in Section 16.1. Failure of the Contractor to submit such claims in a timely and proper manner shall result in a waiver of such claim.

**16.4** The Contractor shall fully cooperate with the County and/or the CR in the submission of such claims described in Section 16.3, shall prepare all supporting data and do everything else necessary to properly present the claims.

**17. Taxes.** The Agreement Amount includes all sales, excise, transportation, unemployment compensation, social security, and any other taxes presently existing or subsequently imposed and levied and the Contractor agrees to pay all of the above and to conform to all applicable municipal, state and federal laws in connection with such taxes. The Contractor further agrees to withhold taxes from the wages and salaries of all employees of the Contractor and pay the same in accordance with the federal and state laws and regulations pertaining thereto. The Agreement Amount includes federal, state and municipal taxes now levied or in force or hereafter imposed on any and all tangible personal property sold or transferred to the County under this Agreement and the Contractor agrees to pay such tax or taxes on such property, the cost of which is included in the Agreement Amount.

## **18. Liens**

**18.1** The Contractor shall promptly pay when due all its project creditors, together with the project creditors of all those below it in the contractual chain.

**18.2** The Contractor shall promptly pay and secure releases from all of its project creditors, including all those below it in the contractual chain, who are entitled to assert claims against the County, the CR or its surety.

**18.3** If any claim or lien is made or filed with or against the County, and/or the CR, the Project, the Premises or the Project funds by any person claiming that the Contractor or any Contractor or other person under contract to the Contractor, or any person or entity employed or engaged by the Contractor at any tier, has failed to make payment for any labor, services, materials, equipment, taxes or other obligations furnished or incurred in connection with the Trade Work, or if the Contractor or any Contractor or other person under contract to the Contractor, or any person or entity employed or engaged by the Contractor at any tier causes damage to the Trade Work or any other work on the project, or if the Contractor fails to perform or is otherwise in default of any term or provision of this Agreement, the County shall have the right to retain from any payment then due or thereafter due an amount which the County deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien, (2) make good any such nonpayment, failure, damage or default, and (3) defend, indemnify and hold harmless the CR and the County against any and all losses, damages and costs, including legal fees and expenses, incurred by either or both of them. The County shall require proof that any such nonpayment, claim or lien is fully satisfied, dismissed and discharged before any remaining retained funds will be released. The County shall, in addition, have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes and the Contractor shall pay and reimburse the CR and the County all such losses, damages, and costs incurred by them which exceed the retained funds.

**19. Assignment.** To the fullest extent permitted by law, the Contractor agrees that it shall not assign, sell, transfer, delegate or encumber any rights, duties or obligations arising under this Agreement including, but not limited to, any right to receive payments hereunder, without the prior written consent of the County in its sole discretion and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. In the event the Contractor assigns, sells, encumbers or otherwise transfers its right to any funds due or to become due under this Agreement as security for any loan, financing or other indebtedness ("Assignment"), notification to the County and the CR of such Assignment

must be sent by certified mail, return receipt requested, to the County and the CR and the Assignment shall not be effective as against the County until the County provides its written consent to such Assignment. The Contractor agrees that any such Assignment shall not relieve the Contractor of any of its agreements, duties, responsibilities or obligations under this Agreement and the Trade Contract Documents and shall not create a contractual relationship or a third-party beneficiary relationship of any kind between the County or the CR and such assignee or transferee.

**20. Guarantee/Warranty.** For a period of one year from the date of the County's final acceptance of the Trade Work, the Contractor guarantees and warrants that the Trade Work complies with the Trade Contract Documents requirements and is free from defects in material and workmanship. This guarantee/warranty shall include, but is not limited to, the cost of all labor, material and related items necessary to correct any such defect, plus the cost of repairing any damage to other items which may have been caused by the defective material or workmanship. If the Contractor fails to begin warranty work within forty-eight (48) hours of being notified that such work is necessary, the County may, at its option, perform the necessary remedial work or secure its performance by others and charge the Contractor with the cost thereof, plus a 15% Administrative Fee. Nothing in this paragraph shall shorten the statute of limitations on any action by the County for breach of contract, negligence or other cause of action against the Contractor.

## **21. Dispute Resolution**

**21.1 Scope of Disputes Provisions.** All Claims, disputes or other matters in question between the parties to this Agreement which arise out of or relate to this Agreement (or the breach thereof), whether in contract or tort, (hereinafter "Dispute") shall be subject to the dispute resolutions set forth below.

**21.2 Initial Dispute Resolution/Mediation.** A Dispute which either party desires to pursue shall be set forth in a detailed written statement of claim submitted to the other party providing the specific basis upon which monetary or other relief is claimed to be due, the specific contractual provision(s) supporting the claim and an itemization of the amount claimed to be due. Following submission of the detailed statement of claim, County and Contractor shall endeavor to settle the Dispute first through face to face direct discussions between officers of the County and Contractor which discussions shall be held at the County's office location involved with the Project within thirty (30) calendar days of a request by either party.

**21.3 Binding Dispute Resolution.** In the event County and Contractor cannot resolve the Dispute through direct discussions as contemplated above, then the Dispute shall, at the sole discretion of County, be decided either (a) by mediation; (b) submission to arbitration administered by the American Arbitration Association or other arbitration tribunal mutually agreed upon by the parties; or (c) litigation subject to the exclusive jurisdiction and venue of Tulsa, Oklahoma.

### **21.4 Arbitration Election**

**21.4.1** In the event County exercises its exclusive right to resolve the Dispute in arbitration, such arbitration shall be conducted in accordance with the applicable rules as the parties may mutually determine in effect at the time the arbitration is commenced as modified by the terms hereof. Any arbitration hereunder shall be held in Tulsa County, Oklahoma.

**21.4.2** Should County exercise its exclusive right to resolve the Dispute by arbitration, then within fourteen (14) days after County gives Contractor notice of County's election of arbitration, the parties shall use good faith efforts to select a single arbitrator mutually acceptable to both parties. If the parties are unable to select an arbitrator, then the parties will select the arbitrator(s) from a panel of experienced construction arbitrators on the American Arbitration Association's large complex case panel or a comparable panel of experienced construction arbitrators maintained by such other arbitration tribunal mutually selected by the parties then in effect. In the event the amount in Dispute exceeds \$1,000,000.00, County and Contractor agree the arbitration shall be heard by a panel of three (3) arbitrators; otherwise, the Dispute shall be heard by a single arbitrator.

**21.4.3** The parties will enter into an Electronically Stored Information Agreement outlining the scope and volume for ESI discovery, which shall take into account the amount and complexity of the Dispute.

**21.4.4** The arbitration award shall be final and binding upon the parties, shall include attorneys' fees and costs to the prevailing party or parties, and may be entered as a judgment in any court having proper jurisdiction. In any arbitration the Arbitrator(s) shall have no power to render an award which has the effect of altering or amending or changing in any way any provisions of this Agreement.

**21.4.5** The parties stipulate and agree that the performance of this Agreement is a transaction involving interstate commerce. Notwithstanding other provisions in the Agreement, or choice of law provisions to the contrary, this agreement to arbitrate shall be enforced pursuant to, and governed by, the Federal Arbitration Act, 9 U. S. C. §1 et seq., which shall not be superseded or supplemented by any other arbitration act, statute or regulation.

**21.4.6** At the sole discretion of County, any arbitration with Contractor shall be consolidated with any other arbitration proceeding relating to the work under the CR Agreement.

**21.5 Litigation Election.** In the event County elects not to exercise its exclusive right to resolve the Dispute by arbitration, or in the event the Dispute between County and Contractor, or any portion thereof, is found to be non-arbitrable, then the parties hereby agree that the Dispute or a portion thereof (as the case may be) shall be subject to exclusive jurisdiction and venue of Tulsa County, Oklahoma. In any such Dispute or portion thereof, which is resolved by litigation, Contractor expressly waives any right to trial by jury.

**21.6 Multiparty Proceeding.** To the extent permitted by Trade Contract Documents, all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent Disputes between the County and the Contractor involve in whole or in part disputes between the CR and the County, Disputes between the Contractor and the County shall be decided by the same tribunal and in the same forum as disputes between the CR and the County.

**21.7 Stay of Proceedings.**

**21.7.1** In the event the provisions for resolution of disputes between the CR and the County contained in the Trade Contract Documents do not permit consolidation or joinder with disputes of third parties, such as the Contractor, resolution of any Dispute between County and Contractor involving in whole or in part disputes between CR and County shall be stayed pending conclusion of any dispute resolution proceeding between CR and County.

**21.7.2** In the event that any action is filed prior to exhaustion of remedies under the Agreement; such action shall be stayed pending conclusion of any dispute resolution proceedings.

**21.8 Work Continuation and Payment.** Unless otherwise agreed in writing, Contractor shall continue the Trade Work and maintain the Schedule of Work during any dispute resolution proceedings. As Contractor continues to perform, County shall continue to make payments in accordance with this Agreement.

**21.9 Cost of Dispute Resolution; Attorneys' Fees.** The cost of any mediation proceeding shall be shared equally by the parties participating.

**21.9.1** The prevailing party in any Dispute arising out of or relating to this Agreement or its breach that is resolved by a dispute resolution procedure designated in the Trade Contract Documents shall be entitled to recover from the other party those reasonable attorneys' fees, costs and expenses (including expert fees and expenses) incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.

**21.9.2** In the event the Contractor is awarded an amount equal to or less than the last written offer of settlement from County, prior to the commencement of binding dispute resolution, County shall be deemed prevailing party and be entitled to recover those reasonable attorneys' fees, costs and expenses (including expert fees and expenses) incurred by the County.

**22. Miscellaneous**

**22.1** No one, other than the parties hereto, their successors, trustees and assigns, shall be entitled to bring action on this Agreement or the Performance Bond provided by the Contractor, it being the express intent of the parties that this Agreement shall not be for the benefit of any third party.

**22.2** Any term or provision of this Agreement which is held to be invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

**22.3** This Agreement, together with the documents referred to or incorporated herein by reference, constitute the complete agreement between the parties. No agent or employee of either party possesses the authority to make, and the parties shall not be bound by nor liable for, any statement, representation, promise or agreement not set forth herein. Any article, section, paragraph or other headings contained in this Agreement are for reference purposes and shall not affect in any way the meaning or interpretation of this Agreement. It is hereby specifically noted and agreed that neither Architects or Engineers nor any other agent of the County of Tulsa has authority to vary, modify or add to the terms and conditions of the contract documents to the prejudice of the County. Contractor shall not be entitled to any claim for extras in any amount, whether performed or not, unless before the commencement thereof such extras shall have been approved and authorized in writing by the Board of County Commissioners of the County of Tulsa, and ratifications of any extras subsequent to the act shall be illegal and not binding upon County.

22.4 The terms and provisions shall extend to and be binding upon the successors, trustees and assigns of the parties hereto, and shall be governed and controlled by the laws of the State of Oklahoma.

22.5 The Contractor agrees to comply with the provisions and any applicable local, state or federal ordinance, regulation, status, or other mandate regarding affirmative action and/or minority/women's business enterprise participation.

22.6 This Agreement has not been altered in any manner from its original form as sent to the Contractor except for required signatures and dates, or as clearly marked and initialed by this Contractor. Any changes to this Agreement not initialed by the County will not be binding.

22.7 This contract is to be governed by and construed according to the laws of the State of Oklahoma. If it should appear that any of the terms hereof are in conflict with any rule of law or statutory provision of the State of Oklahoma, then the terms of the contract which may conflict with the laws of the State of Oklahoma shall be deemed inoperative and null and void insofar as they may be in conflict therewith, and shall be deemed modified to conform to such rule of law.

23. Schedule of Exhibits to the Agreement

The following Exhibits are attached to and are a part of this Agreement.

- Exhibit A: Scope of Work
- Exhibit B: Bonds
- Exhibit C: Affidavit for Contracts & Payments
- Exhibit D: Contractors Release & Waiver of Lien
- Exhibit E: Insurance Requirements and Contractor's Certificate of Insurance
- Exhibit F: Change Order Form
- Exhibit G: Tax Exemption Certificate

This agreement is hereby entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Attest: W. Jon

By: Harlan E. Yocham II  
Print Name: Harlan E. Yocham II  
Print Title: President

Designate type of organization: (  ) Corporation ( ) Partnership ( ) Sole Proprietorship ( ) LLC ( ) Other

Organized in the State of Oklahoma

With its principal place of business at 7 S. Park Street

Attest: Michael Willis  
Michael Willis, Tulsa County Clerk



Tulsa County Board of County Commissioners  
By: Karen Keith  
Print Name: Karen Keith  
Print Title: BOCC Chairman

Approved as to Form:  
Andrea Adelstein  
Tulsa County District Attorney's Office

**Exhibit A:**  
**Scope of Work**

# Exhibit A (Scope of Work)

The Scope of Work and all requirements of such is fully defined in the following documents which are a part of this Agreement:

1. Specifications:
  - a. Grading Plan for Floodplain & Detention – Lilly Architects
  - b. Update of Hydrology Study & Drainage Report – Hydropower International Services, International Consultancy, LLC.
2. Addenda:
  - a. None
3. Drawings:
  - a. Grading Plan for Floodplain & Detention – Lilly Architects
4. Other:
  - a. TCSO Campus Buildout - Flood Plain Grading Bid Packet

# **Exhibit B:**

## **Bonds**



TCSO Campus Buildout - Flood Plain Grading



Tulsa County Procurement  
Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable. This document may not be altered or modified.

**CONTRACTOR (Name and Address):**

Cherokee Pride Construction, Inc.  
PO BOX 28  
Sapulpa, OK 74067

**SURETY (Name and Principal Place of Business):**

Hudson Insurance Company  
100 William Street  
New York, NY 10038

**OWNER: Tulsa County Board of County Commissioners**

Tulsa County Headquarters  
218 West 6th Street  
Tulsa, Oklahoma 74119

**CONSTRUCTION CONTRACT**

Date: \_\_\_\_\_

Amount: \$ 188,000.00 \_\_\_\_\_

Description (Name and Location): TCSO Campus Buildout - Flood Plain Grading  
6094 E 66th Street North, Tulsa, OK

**BOND:**

Date (Not earlier than Construction Contract Date): \_\_\_\_\_

Amount: \$ 188,000.00 \_\_\_\_\_

**CONTRACTOR (Representative):** Cherokee Pride Construction, Inc. **SURETY (Representative):** Hudson Insurance Company

Signature:

Name and Title: \_\_\_\_\_

Signature:

Name and Title: Amy Winters Attorney-In-Fact

*(FOR INFORMATION ONLY-Name, Address and Telephone)*

**AGENT or BROKER:**

BN Bonding, LLC - Barry Herring  
910984 Moccasin Trl  
Chandler, OK 74834

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

Brad Johnson  
300 North Denver Ave.  
Tulsa, OK 74103

**1** The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

**2** With respect to the Owner, this obligation shall be null and void if the Contractor:

**2.1** Promptly makes payment, directly or indirectly, for all sums due Claimants, and

**2.2** Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

**3** With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

**4** The Surety shall have no obligation to Claimants under this Bond until:

**4.1.** Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

**4.2.** Claimants who do not have a direct contract with the Contractor:

**4.2.1.** Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

**4.2.2.** Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

**4.2.3.** Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address listed on Page 1) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

**5** If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

**6** When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

**6.1** Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

**6.2** Pay or arrange for payment of any undisputed amounts.

**7** The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

**8** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**9** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**10** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**11** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

**12** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**13** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## 14 DEFINITIONS

**14.1. Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**14.2. Construction Contract:** The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**14.3. Owner Default:** Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract.

TCSO Campus Buildout - Flood Plain Grading



Tulsa County Procurement  
Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable. This document may not be altered or modified.

**CONTRACTOR** (Name and Address):

Cherokee Pride Construction, Inc.  
PO BOX 28  
Sapulpa, OK 74067

**SURETY** (Name and Principal Place of Business):

Hudson Insurance Company  
100 William Street  
New York, NY 10038

**OWNER:** Tulsa County Board of County Commissioners

Tulsa County Headquarters  
218 West 6th Street  
Tulsa, Oklahoma 74119

**CONSTRUCTION CONTRACT**

Date: \_\_\_\_\_

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**BOND:**

Date (Not earlier than Construction Contract Date): \_\_\_\_\_

Amount: \$ 188,000.00

**CONTRACTOR** (Representative): Cherokee Pride Construction, Inc.

**SURETY** (Representative): Hudson Insurance Company

Signature: 

Signature: 

Name and Title:

Name and Title: Amy Winters Attorney-In-Fact

(FOR INFORMATION ONLY-Name, Address and Telephone)

**AGENT or BROKER:**

BN Bonding, LLC - Barry Herring  
910984 Moccasin Trl  
Chandler, OK 74834

**OWNER'S REPRESENTATIVE** (Architect, Engineer or other party):

Brad Johnson  
300 North Denver Ave.  
Tulsa, OK 74103

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. The Surety's obligation under this Bond shall arise after:

**3.1** The Owner has notified the Contractor and the Surety at its address on Page 1 that the Owner is considering declaring a Contractor Default as described in Paragraph 10 and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than ten (10) days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor's Default; and

**3.2** The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than seven (7) days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

**3.3** The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions.

**4.1** Arrange for a Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

**4.2** Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

**4.3** Obtain proposals or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

**4.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with

reasonable promptness under the circumstances:

**4.1.1.** After investigation, determine the amount for which it may be liable to the Owner, and as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

**4.1.2.** Deny liability in whole or in part and notify the Owner citing reasons therefor.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fourteen (14) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

**6.1** The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

**6.2** Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

**6.3** Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

8. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

9. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provisions in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

7

## 10. DEFINITIONS

**10.1**Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in Settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**10.2**Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**10.3**Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

**10.4**Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract.



# Tulsa County Procurement

## Statutory Defect Bond

61 O.S. Section 113 (B)(3)

### KNOW ALL MEN BY THESE PRESENTS,

That Cherokee Pride Construction, Inc. \_\_\_\_\_, as Principal and Hudson Insurance Company \_\_\_\_\_ a corporation organized under the laws of the State of Delaware \_\_\_\_\_ and authorized to transact business in the State of Oklahoma, as Surety, are held and firmly bound unto the Board of County Commissioners of Tulsa County, Oklahoma, in the penal sum of \_\_\_\_\_ Dollars (\$ 188,000.00 ) One Hundred Eighty-Eight Thousand Dollars and Zero Cents \_\_\_\_\_ in lawful money of the United States of America, said sum being equal to One Hundred percent (100%) of the Contract price, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these presents:

The condition of this obligation is such that:

WHEREAS, said Principal entered into a written contract with the Board of County Commissioners of Tulsa County, dated \_\_\_\_\_, for TCSO Campus Buildout - Flood Plain Grading \_\_\_\_\_ all in compliance with the plans and specifications therefore, made a part of said contract and on file in the Tulsa County Clerk's Office, 218 West 6th Street, Ste. 710, Tulsa, Oklahoma 74119.

NOW, THEREFORE, if said Principal shall pay or cause to be paid to the Board of County Commissioners of Tulsa County all damage, loss, and expense which may result by reason of defective materials and/or workmanship in connection with said work, occurring within a time period of one (1) year from and after the acceptance of said project by the Board of County Commissioners of Tulsa County; then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this Bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year set forth below.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ PRINCIPAL: Cherokee Pride Construction, Inc.

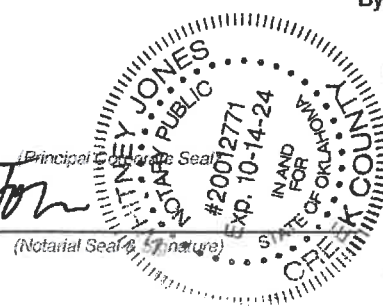
By: \_\_\_\_\_  
(Authorized Representative Printed Name)

Harlan E. Yocham II  
(Authorized Representative Signature)

President  
(Authorized Representative Printed Title)

ATTEST:

W. Jones  
(Notarial Seal & Signature)



SURETY: Hudson Insurance Company

Amy Winters  
(Attorney-in-Fact Signature)

By: Amy Winters  
(Attorney-in-Fact Printed Name)

100 William Street  
(Surety Address)

New York, NY 10038  
(City, State, Zip)

319.409.7538 hudsoncontractbonds@hudsoninsgroup.com  
(Telephone) (Email)

(Surety Corporate Seal)



HICSW-25-A283-0048

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That HUDSON INSURANCE COMPANY, a corporation of the State of Delaware, with offices at 100 William Street, New York, New York, 10038, has made, constituted and appointed, and by these presents, does make, constitute and appoint

Barry Lynn Herring, Amy Winters
of the state of Oklahoma

its true and lawful Attorney(s)-in-Fact, at New York, New York, each of them alone to have full power to act without the other or others, to make, execute and deliver on its behalf, as Surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking shall obligate said Company for any portion of the penal sum thereof in excess of the sum of Twenty Five Million Dollars (\$25,000,000.00).

Such bonds and undertakings when duly executed by said Attorney(s)-in-Fact, shall be binding upon said Company as fully and to the same extent as if signed by the President of said Company under its corporate seal attested by its Secretary.

In Witness Whereof, HUDSON INSURANCE COMPANY has caused these presents to be of its Senior Vice President thereunto duly authorized, on this 20th day of September, 20 21 at New York, New York.



Attest: Dina Daskalakis
Dina Daskalakis
Corporate Secretary

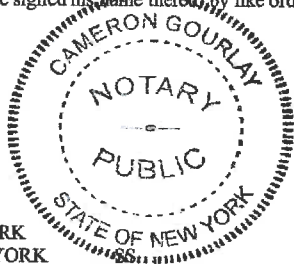
HUDSON INSURANCE COMPANY

By: Michael P. Cifone
Michael P. Cifone
Senior Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK. SS.

On the 20th day of September, 2021 before me personally came Michael P. Cifone to me known, who being by me duly sworn did depose and say that he is a Senior Vice President of HUDSON INSURANCE COMPANY, the corporation described herein and which executed the above instrument, that he knows the seal of said Corporation, that the seal affixed to 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.

(Notarial Seal)



Cameron Gourlay
CAMERON GOURLAY
Notary Public, State of New York
No. 01GO6372305
Qualified in New York County
Commission Expires June 4, 2022

STATE OF NEW YORK
COUNTY OF NEW YORK

CERTIFICATION

The undersigned Dina Daskalakis hereby certifies:

That the original resolution, of which the following is a true and correct copy, was duly adopted by unanimous written consent of the Board of Directors of Hudson Insurance Company dated July 27th, 2007, and has not since been revoked, amended or modified:

"RESOLVED, that the President, the Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have the authority and discretion, to appoint such agent or agents, or attorney or attorneys-in-fact, for the purpose of carrying on this Company's surety business, and to empower such agent or agents, or attorney or attorneys-in-fact, to execute and deliver, under this Company's seal or otherwise, bonds obligations, and recognizances, whether made by this Company as surety thereon or otherwise, indemnity contracts, contracts and certificates, and any and all other contracts and undertakings made in the course of this Company's surety business, and renewals, extensions, agreements, waivers, consents or stipulations regarding undertakings so made; and

FURTHER RESOVLED, that the signature of any such Officer of the Company and the Company's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seal when so used whether heretofore or hereafter, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed."

THAT the above and foregoing is a full, true and correct copy of Power of Attorney issued by said Company, and of the whole of the original and that the said Power of Attorney is still in full force and effect and has not been revoked, and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney is now in force.

Witness the hand of the undersigned and the seal of said Corporation this day of, 20



By: Dina Daskalakis
Dina Daskalakis, Corporate Secretary



**Exhibit C:**  
**Affidavit for Contracts & Payments**



# Affidavit for Contracts & Payments

STATE OF \_\_\_\_\_ )  
 ) SS  
 COUNTY OF \_\_\_\_\_ )

The undersigned (architect, contractor, supplier or engineer), of lawful age, being first duly sworn, on oath says that this contract is true and correct. Affiant further states that the (work, services or materials) will be (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the State of Oklahoma, any county or local subdivision of the state, of money or any other thing of value to obtain or procure the contract or purchase order.

(Business Name of Contractor, Architect, Supplier or Engineer)

(Signature of Authorized Representative)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public (or Clerk or Judge)

My Commission Expires: \_\_\_\_\_ (SEAL)

**NOTE:** Tulsa County requires this form be executed and attached to all invoices exceeding \$25,000.00. 62 O.S. 310.9(B) authorizes counties executing more than one contract, exceeding \$25,000.00 during the fiscal year, with an architect, contractor, engineer or supplier of construction materials to accept one affidavit applying to all work, services or materials completed or supplied under the terms of awarded contracts, or which are needed on a continual basis; such affidavit to be in lieu of all individual affidavits for each invoice submitted in relation to such contract.

Return to:  
 Employee Name

County Department

Purchase Order Number

**Exhibit D:**

**Contractors Release & Waiver of Lien**



# Tulsa County Procurement Construction - Contractors Release & Waiver of Lien

**TO:** ("Owner")

**FROM:** ("Contractor")

**RE:** All labor performed and/or material or equipment furnished by, to, or on behalf of the undersigned Contractor relating to certain improvements known as ("Project") situated on or about certain real property ("Property") located in Tulsa County, Oklahoma, more fully described the below referenced contract between Owner and Contractor pertaining to construction of the Project (all such labor performed and/or materials or equipment furnished by, to, or on behalf of Contractor being the "Work").

Original Contract Date: \_\_\_\_\_

Original Contract Amount: \_\_\_\_\_

Net Approved Change Orders: \_\_\_\_\_

Adjusted Contract Amount: \_\_\_\_\_

Amount Previously Paid: \_\_\_\_\_

Current Payment Due: \_\_\_\_\_

Balance Due: \_\_\_\_\_

The Contractor, for and in consideration of payment of the amount shown in "Current Payment Due" field above, such amount being the full and entire amount due Contractor for the Work, and if "Balance Due" is zero (\$0), the final payment and amount due, including without limitations, any and all payments or amounts due all Subcontractor(s) including all equipment and material providers under or by virtue of any contracts, agreements or understandings ("Contracts") between all Subcontractor(s) including all equipment and material providers and Contractor relating to the Work and any amendments thereto or modifications thereof, and including any extra or additional work, costs or expense ("Extra Cost") whether a part of or relating to any Contracts or otherwise concerning the Work, does hereby waive, release and discharge the Owner, the Project, the Property, the Contract or any Extra Cost.

Furthermore, for the same consideration, Contractor hereby represents and makes affidavit that Contractor has paid in full for all the Work and Contractor makes this agreement and affidavit for the purpose of inducing Owner to make the payment referenced above, acknowledging that Owner is relying upon the same in making such payment, and Contractor hereby agrees to defend, indemnify and hold harmless the Owner, the Project and the Property from any and all liens, claims, demands or cause of action made, asserted or brought by any person, entity or organization arising out of or relating to the Work, the Project, the Contract or any Extra Cost, including any cost, expense or damage, including attorney's fees, sustained or incurred by the Owner as a result of or in connection with any such liens, claims, demands or cause of action.

Executed this date \_\_\_\_\_ On behalf of \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed hereto and having been my duly sworn upon oath stated and acknowledged that the statements contained in the foregoing agreement and affidavit; and that he executed the foregoing for the purposes and considerations and in the capacity therein stated.

Subscribed and swore before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

(Signature of notarial officer)

My Commission Expires:

(SEAL)

My Commission #:

**Exhibit E:**  
**Insurance Requirements and**  
**Contractor's Certificate of Insurance**



# Tulsa County Procurement

## Construction - Minimum Insurance Requirements

---

The Contractor (and any Sub-Contractors) shall carry and keep in force during this Contract, policies of insurance in minimum amounts as set forth below, or as required by the laws of the State of Oklahoma:

1. General Liability Insurance providing for a combined amount of not less than \_\_\_\_\_ for all damages arising out of bodily injury, death, and property damage for each occurrence with an aggregate limit of \_\_\_\_\_, and an excess umbrella liability coverage of \_\_\_\_\_;
2. Workers Compensation Insurance and Employee Liability Insurance as required by Workers Compensation laws of the State of Oklahoma;
3. Comprehensive Automobile Insurance;
4. Errors and Omission Coverage (only applicable to Architect or Engineering Services); and
5. Builders Risk Insurance in an amount dependent on the value of the building and amount of modification required (only applicable to bids for modifications to an existing building).

**IMPORTANT:**

The Contractor shall name the Board of County Commissioners of Tulsa County, Oklahoma as an additional name insured;

The Contractor shall furnish Certificates of Insurance which shall provide that said insurance will not be cancelled by the Insurer without Insurer providing thirty (30) days written notice to the Board of County Commissioners of Tulsa County;

The Insurance specified shall be acquired from an Insurance Company properly licensed by the State of Oklahoma to provide such coverage in the State of Oklahoma.

---



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/6/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Tedford Insurance - Jenks Office P O Box 1050  Jenks OK 74037		<b>CONTACT NAME:</b> Angela Holmstrom, CIC <b>PHONE (A/C, No, Ext):</b> (918) 299-2345 <b>E-MAIL ADDRESS:</b> angelah@tedfordinsurance.com <b>FAX (A/C, No):</b> (918) 299-5441															
<b>INSURED</b> Cherokee Pride Construction Inc PO Box 28  Sapulpa OK 74067		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: West American Insurance Company</td> <td>44393</td> </tr> <tr> <td>INSURER B: Ohio Casualty Insurance Company</td> <td>24074</td> </tr> <tr> <td>INSURER C: CompSource Mutual Insurance Company</td> <td>36188</td> </tr> <tr> <td>INSURER D: Great American Ins Co</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: West American Insurance Company	44393	INSURER B: Ohio Casualty Insurance Company	24074	INSURER C: CompSource Mutual Insurance Company	36188	INSURER D: Great American Ins Co		INSURER E:		INSURER F:	
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INSURER D: Great American Ins Co																	
INSURER E:																	
INSURER F:																	

**COVERAGES**                      **CERTIFICATE NUMBER: 22-23 ALOB**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			BKW57369907	5/15/2022	5/15/2023	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 15,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BA061462861	5/15/2022	5/15/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
							BACEE	\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			US057369907	5/15/2022	5/15/2023	EACH OCCURRENCE	\$ 4,000,000
							AGGREGATE	\$ 4,000,000
								\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	03335864	5/1/2022	5/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
D	Leased/Rented Equipment			IMP2542469	5/15/2022	5/15/2023	Leased/Rented Equipment	\$500,000
							Deductible	\$1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: TCSO Campus Buildout-Flood Plain Grading

<b>CERTIFICATE HOLDER</b>  Tulsa County Board of County Commissioner Tulsa County Headquarters 218 West 6th Street Tulsa, OK 74119	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  M Tedford, CRM, CIC/T

**Exhibit F:**  
**Change Order Form**





# Tulsa County Procurement Change Order Form

**IMPORTANT NOTE:** The Work described herein is **NOT** authorized until this Change Order is completed and signed by all entities listed below. Do **NOT** proceed with Work until the Change Order is completed and signed by each party. This form is required and shall be prepared by the Contractor. All costs must be broken down.

**Change Order #:** \_\_\_\_\_ **Change Order Date:** \_\_\_\_\_ **Project (Name and Address):** \_\_\_\_\_  
**Original Contract Date:** \_\_\_\_\_

**Contractor** \_\_\_\_\_ **Consultant/Architect (if applicable)** \_\_\_\_\_ **Owner** \_\_\_\_\_  
(Name and Address) (Name and Address) (Name and Address)

Brief description of Change and Time Delay:  
\_\_\_\_\_  
\_\_\_\_\_

The original \_\_\_\_\_ was.....  
Net change by previously authorized Change Orders.....  
The \_\_\_\_\_ prior to this Change Order was.....  
The \_\_\_\_\_ will be \_\_\_\_\_ by this Change Order in the amount of.....  
The new \_\_\_\_\_ including this Change Order will be.....

The Contract Time will be \_\_\_\_\_ calendar days and therefore the date of Substantial Completion as of the date of this  
Change Order is \_\_\_\_\_  
\_\_\_\_\_ valid until \_\_\_\_\_ by Contractor, Consultant/Architect (if applicable), and Owner.

**APPROVALS:**

<b>Contractor</b>	<b>Consultant/Architect (if applicable)</b>	<b>Owner</b>
(Contractor Representative Printed Name)	(Consultant/Architect Printed Name)	(Owner Printed Name)
(Contractor Representative Signature)	(Consultant/Architect Signature)	(Owner Signature)
(Date)	(Date)	(Date)

**ATTEST:**  
(County Clerk)

**APPROVED AS TO FORM:**  
(Assistant District Attorney)



# Tulsa County Procurement Breakdown Sheet

If change order is \$10,000.00 or greater, subcontractor invoices MUST be included with breakdown of labor, materials, tax, overhead and profit.

(1) Materials	Unit	Unit Cost	Total
<b>Subtotal (1)</b>			

(2) Labor	No. Of Hours	Hourly Cost	Total
<b>Subtotal (2)</b>			

(3) Equipment	No. Of Hours	Hourly Cost	Total
<b>Subtotal (3)</b>			

(4) Sub Contractors (List each Sub Contractor)	Total
<b>Subtotal (4)</b>	

Column 1	Column 2
Insurance Cost	Overhead Costs (15% Maximum of 1,2 & 3)
Bond Cost	Profit (10% Maximum of 1,2 & 3)
Social Security Taxes (FICA)	Overhead Costs & Profit (Total limited to 15% of 4)
Other Taxes	<b>Total of Column 2</b>
Worker's Compensation	
Employee Fringe Benefits	Total for this Page
<b>Total of Column 1</b>	(Subtotals 1 - 4, and Col. 1 & 2 Totals)



# Tulsa County Procurement

## Explanation

Requested by:  Contractor  Consultant/Architect  Owner

Reason for Change: (check box) Detailed explanation required below.

- Unforeseen site condition.  Work not specified in Contract Documents, but essential to completion of the project.
- Scope change: Owner request.  Other: (Describe) \_\_\_\_\_

Provide a detailed description of the proposed change in the Work and provide detailed reasons why this change is necessary.

### **DETAILED REASON FOR CHANGE IN THE WORK:**

### **CONTRACT TIME REQUEST EXPLANATION:**

*(Describe how the time requested will extend the "critical path" of the project schedule and will not be concurrent with other work.)*

**Exhibit G:**  
**Tax Exemption Certificate**



## Board of County Commissioners

Tulsa County Administration Bldg.  
500 South Denver  
Tulsa, Oklahoma 74103-3832  
918.596.5020

**STAN SALLEE**  
DISTRICT 1

January 4, 2021

Dear Vendor:

The Oklahoma Sales Tax Code, 68 O.S. 1991 Section 1356, exempts from the payment of sales taxes all political subdivisions of the State of Oklahoma.

Because each County in this State is a political subdivision of the State (Article 17, Section 1 of the Constitution of Oklahoma: Herndon v. Anderson, 1656 Okla. 104, 25P2d 326), Tulsa County is exempt from all sales tax.

Sincerely,

Stan Sallee, Chairman  
Tulsa County Board of County Commissioners

SS:jb

Approved:

Douglas Wilson  
Chief of the Civil Division

Note: Tulsa County's Federal Identification Tax Number 73-6006419



# Oklahoma Tax Commission

www.tax.ok.gov

Date Issued: March 21, 2014

Letter ID: L0891154944

Taxpayer ID: \*\*.\*\*\*6419



TULSA COUNTY  
500 S DENVER AVE STE 120  
TULSA OK 74103-3832

AMY

## Oklahoma Sales Tax Exemption Permit Oklahoma State Government

**Non-Transferable**

68 Oklahoma Statutes 2002 Supp., Section 1356(1): Sales of tangible personal property or services to the United States Government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state are hereby exempted from the tax levied by this article.

**Permit Number**

EXM-10028212-06

<b>Business Location</b>	<b>Industry Code</b>	<b>City Code</b>	<b>Permit Effective</b>	<b>Permit Expires</b>
TULSA COUNTY BOARD OF COUNTY COMMISSIONERS 5051 S 129TH EAST AVE TULSA OK 74134-7004	921190	7281	February 10, 2006	NON-EXPIRING

Thomas Kemp Jr., Chairman  
Jerry Johnson, Vice-Chairman  
Dawn Cash, Secretary-Member



## Tax Exempt Letter

<Contract Date>

<Contractor Name>

<Contractor Address>

<Contractor City, State, Zip>

RE: <Project Name>

Please be advised that the Board of County Commissioners of the County of Tulsa, Oklahoma, has contracted for the construction of a public improvement project as referenced above, and that pursuant to Title 68 §1356(10), sales on tangible personal property or services to be wholly consumed in the performance of such projects are exempt from State and Local Sales Tax when:

[a]ny person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency.

This letter of authorization expires <Contract Date + 1 Year>. A photo copy of this letter may be considered as the original.

Sincerely,

Matney M. Ellis  
Tulsa County Procurement Director