

REQUEST FOR PROPOSAL:
Basketball Court, Playground and Pavilion Installation
Charles McCarroll Park
401 Dexter Street
Marietta, Oklahoma

ISSUED BY:
City of Marietta
101 W. Main Street
Marietta, OK 73448

ISSUED DATE:
May 24, 2021

MAYOR:
Kimberly Fraire

CLERK:
Dottie Gwin

TREASURER:
Misti Kirk

COUNCIL:
KorDale Lornes Doug Stewart Brandy Valenzuela Richard Barker
Kermit McKinney Lawrence Anderson Tambre Sanders Angela Vega

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REQUEST FOR PROPOSAL
CITY OF MARIETTA

Sealed, written proposals will be received by the City of Marietta, Oklahoma, for a general contractor to design, supply and install playground equipment, basketball court, pavilion, and other park amenities at Charles McCarroll Park, to include all labor, materials, equipment, and supplies, **through 3:00 p.m. on Wednesday, June 30, 2021.** The proposals will be opened and tabulated at that time. Proposals will be delivered or mailed to Dustin Scott, City Administrator, 101 W. Main Street, Marietta, Oklahoma, 73448.

Proposals are tentatively scheduled for consideration by the City Council on Tuesday, July 13, 2021, at 6:00 p.m. in the Meeting Room of the Marietta Public Works Authority, located at 303 W. Main Street, Marietta, Oklahoma, 73448.

No proposal may be withdrawn for at least forty-five (45) days after the scheduled closing time of receipt of the proposal.

The City of Marietta reserves the right to change dates the proposal will be considered, reject any or all proposals, waive all formalities and to accept that deemed most advantageous for value received.

Dustin Scott
City Administrator

Published in the Marietta Monitor
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GENERAL CONDITIONS OF THE CONTRACT

1. PURPOSE

- 1.1 Through a formal Request for Proposal (RFP) process, the intent is to enter a written contract with the lowest most responsible bidder for a general contractor to design, supply and install playground equipment, basketball court, pavilion, and other park amenities at Charles McCarroll Park, to include all labor, materials, equipment, and supplies, and under the direction of the City of Marietta.

2. AWARD

- 2.1 The City of Marietta reserves the right to change dates the bid will be considered, reject any or all bids, waive all formalities and to accept that deemed most advantageous for value received.
- 2.2 The City will review responses to the RFP. The bidder meeting the minimum specifications with the lowest, most responsible proposal shall be recommended to the City of Marietta Council for approval.

3. REQUEST FOR PROPOSAL ORGANIZATION/SUBMITTAL

- 3.1 One (1) original and (1) unbound copy for a total of two (2) proposals shall be submitted in a sealed envelope addressed to or hand-delivered no later than the closing date and time to the following location: Dustin Scott, City Administrator, 101 W. Main St., Marietta, OK 73448
- 3.2 All proposals shall be in the office of the City Administrator before the final closing date and hour as shown in this Request for Proposal. Proposals received after the time set for receipt for proposals shall not be considered.
- 3.3 All proposals shall be submitted on the form provided and placed in a sealed envelope, plainly marked with proposal number, proposal name, and shall bear on the outside the vendor's name and address. When submitting multiple proposals, each proposal shall be submitted in separate envelopes. All costs associated with responding to this RFP shall be borne by the bidder.
- 3.4 Proposals shall be original and hard copy. Facsimile proposals shall not be accepted. Proposals shall be filled out in ink or typewritten. Initial all corrections.
- 3.5 Failure to provide required data or failure to complete the RFP form(s) may be grounds rejection.
- 3.6 Bidder shall provide with their proposal, documentation to include: Non-Collusion Affidavit; Business Relationships Affidavit and a certified check, cashier's check or bid bond equal to five percent (5%) of the proposal, which shall be deposited as a guaranty; or an irrevocable letter of credit containing such terms as may be prescribed by the State of Oklahoma Office of Public Affairs issued by a financial institution insured by the

Federal Deposit Insurance Corporation for the benefit of the state, on behalf of the City of Marietta, in an amount equal to five percent (5%) of the bid. The cost of republication of notice to bidders, all actual expenses incurred by reason of the bidder's default and the difference between the low proposal of the defaulting bidder and the amount of the proposal of the bidder to whom the contract is subsequently awarded, but not to exceed the amount of said check or bid bond or irrevocable letter of credit may, at the discretion of the City of Marietta, will be forfeited to the City of Marietta in the event the apparent successful bidder fails to execute the contract or fails to provide the required bonds or irrevocable letter of credit and insurance to the City of Marietta. Said certified or cashier's check, bid bond or irrevocable letter of credit shall be returned to the successful bidder on execution and delivery of the contract and required bonds or irrevocable letter of credit and insurance. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the proposal. Failure to provide will result in rejection of proposal.

- 3.7 All proposals shall be signed, and the non-collusion and business relationship affidavits executed and notarized upon the submission of the RFP.
- 3.8 A performance, statutory, and maintenance bond, each in the amount of one hundred percent (100%) of the contract price and each with a corporate surety approved by the Owner shall be required for the faithful performance of the contract.
- 3.9 Inquiries: Inquiries regarding specifications shall be submitted in writing by mail to Dustin Scott, City Administrator, 101 W. Main St., Marietta, OK 73448, or email to dscott@mariettaok.city. Any interpretations, corrections and changes to this proposal and specifications or extensions to the opening date will be made by addenda. Sole issuing authority of addenda shall be vested in the City Administrator. Addenda will be mailed to all who are known to have received a copy of this bid. Bidders shall acknowledge receipt of all addenda. Written requests for interpretation shall be received no later than 4:30 p.m., Wednesday, June 16, 2021. Answers to all questions will be forwarded to all prospective bidders no later than 4:30 p.m., Thursday, June 17, 2021.
- 3.10 Schedule of events:

Proposal Issued	May 24, 2021
Inquiry Date	June 16, 2021, 4:30 p.m.
Addenda/Responses to Inquiries Issued	June 17, 2021, 4:30 p.m.
Proposal(s) Due	June 30, 2021, 3:00 p.m.
Anticipated Date of Award	July 13, 2021

4. TERMS AND CONDITIONS

- 4.1 Proposals must comply with all federal, state, county, and local laws and regulations concerning this type of material/item/service.

- 4.2 Conflict of Interests: In the event there is a potential or actual conflict interest, the vendor shall provide full disclosure to the City of Marietta. The City shall determine if the conflict, whether potential or actual, is material.
- 4.3 Choice of Law and Venue: The resulting contract shall be construed under the laws of the State of Oklahoma and venue in any action and/or litigation commenced to enforce the contract shall be instituted in the appropriate courts in Love County, in the State of Oklahoma.
- 4.4 Successful bidder shall defend, indemnify, and save harmless the City and all its officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award. Successful bidder shall pay any judgment with cost which may be obtained against City growing out of such injury or damages.
- 4.5 Any variations or exceptions to the specifications must be stated by the bidder. All proposals must meet minimum standards.
- 4.6 All materials/supplies/items must be new and unused, unless otherwise specified, in first-class condition, and of current/latest manufactured make and model.
- 4.7 Each bidder must provide one (1) copy of the manufacturer's specifications and warranty, if applicable.
- 4.8 Design, strength, quality of materials, and workmanship must conform to the highest standards of manufacturing and engineering practices.
- 4.9 Warranty: Successful bidder shall warrant that all materials shall conformed proposed specifications and/or manufacturer's warranty and be free from all defects in material, workmanship, and title.
- 4.10 Material/item/service proposals shall be subject to the City's approval. Materials/items/services found defective or not meeting specifications shall be picked up within one (1) week after notification, or as agreed, the materials will become a donation to the City for disposal.
- 4.11 If requested, samples shall be furnished free of expense to the City of Marietta and shall be returned to the vendor, at the vendor's expense.
- 4.12 Exceptions/Substitutions: All proposals shall meet minimum specifications to be considered for award. Vendors bidding substitutions shall state these exceptions by attachment, as part of the proposal. The absence of exceptions shall indicate that the bidder has not taken exceptions and shall hold the bidder responsible to perform in strict accordance with the specifications of the proposal.

- 4.13 Descriptions: Any reference to model and/or make/manufacture used in proposal specifications is descriptive and is not restrictive. It is used to indicate the type of quality desired. Proposals on materials/items/services of like nature and quality will be considered.
- 4.14 Silence of Specification: The apparent silence of specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made based on this statement.
- 4.15 Minimum Standards for Responsible Prospective Bidders: A prospective bidder must affirmatively demonstrate bidder's responsibility, and shall meet the following requirements:
- 4.15.1 Have adequate financial resources, or the ability to obtain such resources as required.
 - 4.15.2 Ability to comply with the required or proposed delivery schedule.
 - 4.15.3 Have a satisfactory record of performance.
 - 4.15.4 Have a satisfactory record of integrity and ethics.
 - 4.15.5 Be otherwise qualified and eligible to receive an award.
- The City may request representation and/or other information sufficient to determine bidder's ability to meet these minimum standards listed above.
- 4.16 References: The City may request a list of at least three (3) references where like materials/items/services have been supplied.
- 4.17 Delivery: All proposals are F.O.B. Marietta, Oklahoma.
- 4.18 Delivery Time: Proposal shall show number of days required to place materials/items/services at the City's designated location or to complete services. Failure to state delivery time may cause proposal to be rejected. Successful bidder shall notify the City immediately if the delivery schedule cannot be met. If delay is foreseen, successful bidder shall give written notice to the City. The City has the right to extend delivery time if reason appears valid. Successful bidder shall keep the City advised at all times of the status of the order.

5. RFP STATUS

- 5.1 City of Marietta rights:
- 5.1.1 The City and its designees reserve the right to determine whether a proposal is responsive in compliance with the specifications.
 - 5.1.2 The City reserves the right to reject proposals when procedures stated herein are not followed.
- 5.2 Effective Period: Proposals submitted shall remain in effect for a period of forty-five (45) days after closing date.

- 5.3 Withdrawal of Proposal: Proposal may be withdrawn any time prior to the closing date; however, the City reserves the right to withdraw the vendor(s) from future bids/proposals who have withdrawn a proposal after the closing date and prior to the effective period of the RFP without the City's approval.
- 5.4 Changes: It shall be the bidder's responsibility to bring to the attention of the City any discrepancies in, omissions from, or errors in the documents, or enhancements which would be in the best interest of the City, or if they are in doubt as to the meaning of any part of the RFP.
- 5.5 Examinations: Before submitting any proposal, the bidder shall thoroughly examine the RFP and otherwise be fully informed as to all existing conditions and limitations.
- 5.6 Modifications of RFP: Oral modifications will not be considered. Any bidder may modify their proposal before closing. Only modifications receive in sealed envelopes with the RFP number, item description and closing date clearly marked on outside shall be accepted. Written confirmation must be received under the same signature as prior submitted proposal. All modifications are to be clearly numbered and dated as to determine the final revision.
- 5.7 Sales Tax Exemption: All proposals shall be submitted excluding Federal Excise Tax and Oklahoma State Tax. The City is exempt from Federal Excise Tax and Oklahoma State Tax by State statute. When proof of tax exemption is required, a notation should be made on this proposal and an exemption letter shall be furnished.

6. GENERAL CONDITIONS

- 6.1 DEFINITIONS: Wherever used in the contract documents, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:
 - 6.1.1 Addenda: Written or graphic instruments issued prior to the execution of the agreement which modify or interpret the contract documents, drawings and specifications by additions, deletions, clarifications or corrections.
 - 6.1.2 Bid: The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.
 - 6.1.3 Bidder: Any person, firm or corporation submitting a bid for the work.
 - 6.1.4 Bonds: Bid, performance, and maintenance bonds and other instruments of security furnished by the Contractor and the Contractor's surety in accordance with the contract documents.
 - 6.1.5 Change Order: A written order to the Contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents or authorizing an adjustment in the contract price or contract time.
 - 6.1.6 Contract Documents: The contract, including Advertisement for Bids, Information for Bidders, Bid, Bid Bond, Agreement, Payment (Statutory) Bond,

Performance Bond, Notice of Award, Notice to Proceed, Change Order, Drawings, Specifications and Addenda.

- 6.1.7 Contract Price: The total monies payable to the Contractor under the terms and conditions of the contract documents.
- 6.1.8 Contract Time: The number of calendar days stated in the contract documents for the completion of the work.
- 6.1.9 Contractor: The person, firm or corporation with whom the Owner has executed the agreement.
- 6.1.10 Drawings: The parts of the contract documents which show the characteristics and scope of the work to be performed and which has been prepared or approved by the Engineer.
- 6.1.11 Engineer: The person, firm or corporation named as such in the contract documents.
- 6.1.12 Field Order: A written order effecting a change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the Engineer to the Contractor during construction.
- 6.1.13 Notice to Proceed: Written communication issued by the Owner to the Contractor authorizing him/her to proceed with the work and establishing the date for commencement of the work.
- 6.1.14 Notice of Award: The written notice by Owner to the apparent successful bidder stating that, upon compliance by the apparent successful bidder with the conditions enumerated therein within the time specified, Owner will sign and deliver the agreement.
- 6.1.15 Owner: A public or quasi-public body or authority, corporation, association, partnership or individual for whom the work is to be performed.
- 6.1.16 Project: The undertaking to be performed as provided in the contract documents.
- 6.1.17 Resident Project Representative: The authorized representative of the Owner who is assigned to the project site or any part thereof.
- 6.1.18 Shop Drawings: All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor which illustrate how specific portions of the work shall be fabricated or installed.
- 6.1.19 Specifications: A part of the contract documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

- 6.1.20 Contractor: An individual, firm or corporation having a direct contract with Contractor or with any other subcontractor for the performance of a part of the work at the site.
 - 6.1.21 Substantial Completion: That date certified by the Engineer when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the contract documents, to allow the project or specified part to be utilized for the purposes for which it is intended.
 - 6.1.22 Supplemental General Conditions: Modifications to General Conditions required by a Federal agency for participation in the project and approved by the agency in writing prior to being included in the contract documents or such requirements that may be imposed by applicable State laws.
 - 6.1.23 Supplier: Any person or organization who supplies materials or equipment for the work, including that fabricated to a special design, but who does not perform labor at the site.
 - 6.1.24 Work: All labor necessary to produce the construction required by the contract documents and all materials and equipment incorporated or to be incorporated in the project.
 - 6.1.25 Written Notice: Any notice in writing to any party to the agreement regarding any part of this agreement. Said written notice shall be considered delivered and the service thereof completed when posted by certified or registered mail to said party at their last given address or delivered in person to said party or their authorized representative at the project site.
- 6.2 ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS:
- 6.2.1 The Contractor may be furnished additional instructions and detail drawings by the Engineer as necessary to carry out the work required by the contract documents.
 - 6.2.2 The additional drawings and instructions thus supplied will become a part of the contract documents. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.
- 6.3 SCHEDULES, REPORTS AND RECORDS:
- 6.3.1 The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data, where applicable, as are required by the contract documents for the work to be performed.
 - 6.3.2 Prior to the first partial payment estimate, the Contractor shall submit construction progress schedules showing the order in which the Contractor proposes to carry on the work, including the dates at which the various parts of

the work will be started, estimated date of completion of each part and, as applicable:

6.3.2.1 The dates at which special detail drawings will be required; and

6.3.2.2 Respective dates for submission of shop drawings, the beginning of manufacture, the testing and the installation of materials, supplies, and equipment.

6.3.3 The Contractor shall also submit a schedule of payments the Contractor anticipates will be earned during the course of the work.

6.4 DRAWINGS AND SPECIFICATIONS

6.4.1 The drawings and specifications are tools to be used by the Contractor to enable the contractor to furnish all labor, materials, tools, equipment and transportation necessary for the proper performance of the work in accordance with the contract documents and all incidental work necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the Owner.

6.4.2 In case of conflict between the drawings and the specifications, the specifications shall govern. Figure dimensions and drawings shall govern over scale dimensions and detail drawings shall govern general drawings.

6.4.3 Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported, in writing, to the Engineer, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

6.5 SHOP DRAWINGS

6.5.1 The Contractor shall provide shop drawings as may be necessary for the performance of the work as required by the contract documents. The Engineer shall promptly review all shop drawings. The Engineer's approval of any shop drawing shall not release the Contractor from responsibility for deviations from the contract documents. The approval of any shop drawing that substantially deviates from the requirement of the contract documents shall be evidenced by a change order.

6.5.2 When submitted for the Engineer's review, shop drawings shall bear the Contractor's certification that he has reviewed, checked and approved the shop drawings and that they are in conformance with the requirements of the contract documents.

6.6 MATERIALS, SERVICES AND FACILITIES

- 6.6.1 It is understood that, except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the work within the specified time.
 - 6.6.2 Materials and equipment shall be so stored as to preserve their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located to facilitate prompt inspection.
 - 6.6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
 - 6.6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the Contractor and approved by the Engineer.
 - 6.6.5 Materials, supplies or equipment to be incorporated into the work shall be purchased by the Contractor or the subcontractor free and clear of chattel mortgages, conditional sales contracts or other agreements by which an interest is retained by the seller.
- 6.7 INSPECTION AND TESTING
- 6.7.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards as required and defined in the contract documents.
 - 6.7.2 The Owner shall provide all inspection and testing services not required by the contract documents.
 - 6.7.3 The Contractor shall provide, at the Contractor's expense, the testing and inspection services required by the contract documents.
 - 6.7.4 If the contract documents, laws, ordinance, rules, regulations or orders of any public authority having jurisdiction require any specific work to be inspected, tested or approved by someone other than the Contractor, the Contractor will give the Engineer timely notice of readiness. The Contractor will then furnish the Engineer the required certificates of inspection, testing or approval.
 - 6.7.5 Inspections, tests or approvals by the Engineer or others shall not relieve the Contractor from the obligation to perform the work in accordance with the requirements of the contract documents.
 - 6.7.6 The Engineer and the Engineer's representatives will at all times have access to the work. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other

relevant data and records. The Contractor will provide proper facilities for such access and observation of the work and for any inspection or testing thereof.

6.7.7 If any work is covered contrary to the written instructions of the Engineer, it must, if requested by the Engineer, be uncovered for the Engineer's observation and the covering replaced at the Contractor's expense.

6.7.8 If the Engineer considers it necessary or advisable that covered work be inspected or tested by others, the Contractor, at the Engineer's request, will uncover, expose or otherwise make available for observation, inspection or testing, as the Engineer may require, that portion of the work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such work is defective, the Contractor will bear all expenses of such uncovering, exposing, observing, inspecting and testing and of satisfactory reconstruction. If, however, such work is not found to be defective, the Contractor will be allowed an increase in the contract price or an extension of the contract time, or both directly attributable to such uncovering, exposing, observing, inspecting, testing and reconstruction and an appropriate change order shall be issued.

6.8 SUBSTITUTIONS

6.8.1 Whenever a material, article or piece of equipment is identified on the drawings or specifications by referenced to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, recommend the substitution of a material, article or piece of equipment of equal substance and function for those referred to in the contract documents by reference to brand name or catalog number and if, in the opinion of the Engineer, such material, article or piece of equipment is of equal substance sand function to that specified, the Engineer may approve its substitution and use by the specified, the Engineer may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the contract price and the contract documents shall be appropriately modified by change order. The Contractor warrants that if substitutes are approved, not major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the contract price or contract time.

6.8.2 The Contractor shall pay all applicable royalties and license fees and shall defend all suits or claims for infringement of any patent rights and save the Owner harmless from loss on account thereof, except that the Owner shall be

responsible for any such loss when a particular process, design or product of a particular manufacturer or manufacturers is specified; however, if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, the Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the Engineer.

6.9 SURVEYS, PERMITS, REGULATIONS

6.9.1 The Owner shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the work, together with a suitable number of benchmarks adjacent to the work as shown in the contract documents. From the information provided by the Owner, unless otherwise specified in the contract documents, the Contractor shall develop and make all detail surveys needed for construction, such as slope stakes, batter boards, stakes for pipe locations, and other working points, lines, elevations and cut sheets.

6.9.2 The Contractor shall carefully preserve benchmarks, reference points and stakes and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.

6.9.3 Permits and licenses of a temporary nature necessary for the performance of the work shall be secured and paid for by the Contractor unless otherwise stated in the Supplemental General Conditions. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance therewith, the Contractor shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided in Section 7.12, CHANGES IN THE WORK.

6.10 PROTECTION OF WORK, PROPERTY AND PERSONS

6.10.1 The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and program in connection with the work. The Contractor will take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury or loss to all employees on the work and other persons who may be affected thereby and for the protection of all the work and all materials or equipment to be incorporated therein, whether in storage on or off site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and

utilities not designated for removal, relocation or replacement in the course of construction.

6.10.2 The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor will erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. The Contractor will notify owners of adjacent utilities when performance of the work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor or any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except damage or loss attributable to the fault of the contract documents or to the acts or omissions of the Owner or the Engineer or anyone employed by either them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

6.10.3 In emergencies affecting the safety of persons or the work or property at the site or adjacent thereto, the Contractor, without special instructions or authorization from the Engineer or Owner, shall act to prevent the threatened damage, injury or loss. The Contractor will give the Engineer prompt written notice of any significant changes in the work or deviations from the contract documents caused thereby and a change order shall thereupon be issued covering the changes and deviations involved.

6.11 SUPERVISION BY CONTRACTOR

6.11.1 The Contractor shall supervise and direct the work. He/she shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

6.12 CHANGES IN THE WORK

6.12.1 The Owner may, at any time, as the need arises, order changes within the scope of the work without invalidating the agreement. If such changes increase or decrease the amount due under the contract documents or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.

6.12.2 The Engineer may also, at any time, by issuing a field order, make changes in the details of the work. The Contractor shall proceed with the performance of any changes in the work so ordered by the Engineer unless the Contractor believes that such field order entitles the Contractor to a change in contract price or time, or both, in which event, the Contractor shall give the Engineer written notice thereof within seven (7) days after the receipt of the ordered change. Thereafter, the Contractor shall document the basis for the change in contract price or time within thirty (30) days. The Contractor shall not execute such changes pending the receipt of an executed change order or further instruction from the Owner.

6.13 CHANGES IN CONTRACT PRICE

6.13.1 The contract price may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:

6.13.1.1 Unit prices previously approved;

6.13.1.2 An agreed lump sum.

6.14 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

6.14.1 The date of beginning and the time for completion of the work are essential conditions of the contract documents and the work embraced shall be commenced on a date specified in the Notice to Proceed.

6.14.2 The Contractor will proceed with the work at such rate of progress as to ensure full completion within the contract time. It is expressly understood and agreed by and between the Contractor and the Owner that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

6.14.3 If the Contractor shall fail to complete the work within the contract time or extension of time granted by the Owner, then the Contractor shall pay to the Owner the amount of \$250.00 for each calendar day in liquidated damages, the Contractor shall be in default after the time stipulated in the contract documents.

6.14.4 The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following and the Contractor has promptly given written notice of such delay to the Owner or Engineer:

6.14.4.1 Any preference, priority or allocation order duly issued by the Owner.

6.14.4.2 Unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, flood, epidemics, quarantine, restrictions, strikes, freight embargoes and abnormal and unforeseeable weather; and

6.15 CORRECTION WORK

6.15.1 The Contractor shall promptly remove from the premises all work rejected by the Engineer for failure to comply with the contract documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the work in accordance with the contract documents without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damages by such removal or replacement.

6.15.2 All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected work within ten (10) days after receipt of written notice, the Owner may remove such work and store the materials at the expense of the Contractor.

6.16 SUBSURFACE CONDITIONS

6.16.1 The Contractor shall promptly, before such conditions are disturbed except in the event of an emergency, notify the Owner by written notice of:

6.16.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the contract documents; or

6.16.1.2 Unknown physical conditions at the site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inherent in the work the character provided for in the contract documents.

6.16.2 The Owner shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease, an adjustment shall be made, and the contract documents shall be modified by a change order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless the required written notice has been given, and provided that the Owner may, if the Owner determines the facts so justify, consider and adjust any claims asserted before the date of final payment.

6.17 SUSPENSION OF WORK, TERMINATION AND DELAY:

6.17.1 The Owner may suspend the work or any portion thereof for a period of not more than ninety (90) days or until such further time as agreed upon by the Contractor in a written notice to the Contractor and the Engineer fixing the date

on which work shall be resumed. The Contractor will resume that work on the date so fixed. The Contractor will be allowed an increase in the contract price or an extension of the contract time, or both, for any costs and/or delays incurred which are directly attributable to any suspension.

6.17.2 If any of the following conditions occur:

- 6.17.2.1 The Contractor is adjudged bankrupt or insolvent or makes a general assignment for the benefit of its creditors;
- 6.17.2.2 A trustee or receiver is appointed for the Contractor or for any of its property;
- 6.17.2.3 Contractor files a petition to take advantage of any debtor's act or to reorganize under bankruptcy of applicable laws;
- 6.17.2.4 The Contractor repeatedly fails to supply sufficiently skilled workmen or suitable materials or equipment;
- 6.17.2.5 The Contractor repeatedly fails to make prompt payments to subcontractors or for labor, materials or equipment;
- 6.17.2.6 The Contractor disregards laws, ordinance, rules, regulations or orders of any public body have jurisdiction over the work;
- 6.17.2.7 The Contractor disregards the authority of the Engineer or otherwise violates any provision of the contract documents

then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and its surety a minimum of then (10) days from delivery of a written notice, terminate the services of the Contractor and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and finish the work by whatever method the Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect cost of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceeded such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Engineer and incorporated in a change order.

- 6.17.3 Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter occur. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the contract documents.

- 6.17.4 After ten (10) days from the delivery of a written notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case, the Contractor shall be paid for all work executed and any expense sustained plus a reasonable profit.
- 6.17.5 If, through no act or fault of the Contractor, the work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority or the Engineer fails to act on any request for payment within thirty (30) days after it is submitted or the Owner fails to pay the contractor substantially the sum approved by the Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a written notice to the Owner and the engineer, terminate the contract and recover from the Owner payment for all work executed and all expenses sustained. In addition to and in lieu of terminating the contract, if the Engineer has failed to act on a request for payment or if the Owner has failed to make payment as aforesaid, the Contractor may, upon ten (10) days written notice to the Owner and Engineer, stop the work until paid all amounts then due, in which event and upon resumption of the work, change orders shall be issued to adjust the contract price or extend the contract time, or both, to compensate for the costs and delays attributable to the stoppage of the work.
- 6.17.6 If the performance of all or any portion of the work is suspended, delayed or interrupted as a result of a failure by the Owner or Engineer to act within the time specified in the contract documents or if no time is specified, within a reasonable time, an adjustment in the contract price or an extension of the contract time, or both, shall be made by change order to compensate the Contractor for the costs and delays unnecessarily caused by the failure of the Owner or Engineer.

6.18 PAYMENT TO CONTRACTOR

- 6.18.1 At least ten (10) days before each progress payment falls under (but not more often than one a month), the Contractor will submit to the Engineer a partial payment estimate filled out and signed by the contractor, covering the work performed during the period covered by the partial payment estimate and supported by such data as the Engineer may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by supporting data, satisfactory to the owner, which will establish the Owner's title to the material and equipment and

protect the Owner's interest therein, including applicable insurance. The Engineer will, within ten (10) days after the receipt of each partial payment estimate, either indicate approval of payment in writing and present the partial payment estimate to the Owner or return the partial payment estimate to the Contractor indicating in writing the reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Owner will, within ten (10) days of presentation of an approved partial payment estimate, pay the Contractor a progress payment based on the approved partial payment estimates less the retainage. The retainage shall be an amount equal to 10% of said estimate until 50% of the work has been completed. At 50% completion, further partial payments shall be made in full to the Contractor and no additional amounts may be retained unless the Engineer certifies that the job is not proceeding satisfactorily and amounts previously retained shall not be paid to the Contractor. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained; however, in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, any amount retained may be paid to the Contractor. When the work has been substantially completed except for work which cannot be completed because of weather conditions, lack of materials or other reasons which, in the judgment of the Owner, are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed.

- 6.18.2 The request for payment may also include an allowance for the cost of major materials and equipment suitably stored either at or near the site.
- 6.18.3 Prior to substantial completion, the Owner, with the approval of the Engineer and with the concurrence of the Contractor, may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.
- 6.18.4 The Owner shall have the right to enter the premises for the purpose of doing work not covered by the contract documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work or the restoration of any damaged work except such as may be caused by agents or employees of the Owner.
- 6.18.5 Upon completion and acceptance of the work, the Engineer shall issue a certificate attached to the final payment request that the work has been accepted under the conditions of the contract documents. The entire balance

found to be due to the Contractor, including the retained percentages, except such sums as may be lawfully retained by the Owner, shall be paid to the Contractor within thirty (30) days of completion and acceptance of the work.

6.18.6 The Contractor will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demand of subcontractors, laborers, workmen, mechanics, material men and furnishers of machinery and parts therefore, equipment, tools and supplies incurred in the furtherance of the performance of the work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged or waived. If the Contractor fails to do so, the Owner may, after having notified the contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed in accordance with the terms of the contract documents. In no event shall these provisions be construed to impose any obligations upon the Owner to either the Contractor, the Contractor's surety or any third party. In paying any unpaid bills of Contractor, any payment so made by the Owner shall be considered as a payment made under the contract documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

6.18.7 If the Owner failed to make payment within thirty (30) days after approval by the Engineer, in addition to other remedies available to the Contractor, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.

6.19 ACCEPTANCE OF FINAL PAYMENT AS RELEASE

6.19.1 Acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others, relating or arising out of this work. Any payment, however, final or otherwise, shall not release the Contractor or its sureties from any obligations under the contract documents or the performance of the payment bonds.

6.20 INSURANCE

6.20.1 The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the

Contractor's execution of the work, whether such execution be by the Contractor, any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. The claims are the following:

- 6.20.1.1 Claims under Worker's Compensation, disability benefit and other similar employee benefit acts;
- 6.20.1.2 Claims for damages because of bodily injury, occupational sickness or disease or death of employees;
- 6.20.1.3 Claims for damages because of bodily injury, sickness or disease or death of any person other than employees;
- 6.20.1.4 Claims for damages covered by the usual personal injury liability coverage which are sustained by:
 - 6.20.1.4.1 Any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor; or
 - 6.20.1.4.2 Any other person.
- 6.20.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.
- 6.20.2 Certificates of insurance acceptable to Owner shall be filed with the Owner prior to commencement of work. These certificates shall contain a provision that coverages afforded under the policies shall not be canceled unless at least fifteen (15) days prior written notice has been given to the Owner.
- 6.20.3 The Contractor shall procure and maintain, at the Contractor's own expense, during the contract time, liability insurance as hereinafter specified:
 - 6.20.3.1 Contractor's general public liability and property damage insurance, including vehicle coverage, issued to the Contractor and protecting the Contractor from all claims for personal injury, including death, and all claims for destruction of or damage to property arising out of or in connection with any operations under the contract documents, whether such operations be by the Contractor or by any subcontractor employed by the Contractor. Insurance shall be written with a limit of liability of not less than \$100,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident, and a limit of liability of not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$100,000 for all property damage sustained by any one person

in any one accident and a limit of liability not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident.

6.20.3.2 The Contractor shall acquire and maintain, if applicable, fire and extended coverage insurance upon the project to the full insurable value thereof for the benefit of the Owner, the Contractor and the subcontractors, as their interest may appear. This provision shall in no way release the Contractor or the Contractor's surety from obligations under the contract documents to fully complete the project.

6.20.4 The Contractor shall procure and maintain, at the Contractor's own expense, during the contract time, in accordance with the provisions of the laws of the State in which the work is performed, Worker's Compensation insurance, including occupational disease provisions, for all of the Contractor's employees at the site of the project and, in case any work is sublet, the Contractor shall require such subcontractor similarly to provide Worker's Compensation insurance, including occupational disease provisions, for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate and suitable insurance for the protection of its employees not otherwise protected.

6.20.5 The Contractor shall secure, "all risk" type Builder's risk insurance for work to be performed. Unless specifically authorized by the Owner, the amount of such insurance shall not be less than the contract price totaled in the bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft and smoke during the contract time and until the work is accepted by the Owner. The policy shall name as the insured the Contractor and the Owner.

6.21 CONTRACT SECURITY

6.21.1 The Contractor shall, within ten (10) days after the receipt of the Notice of Award, furnish the Owner with a performance bond and a payment (statutory) bond in penal sums equal to the amount of the contract price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the contract documents and upon the prompt payment by the Contractor to all persons supplying labor and materials in the performance of the work required by the contract documents. Such bonds shall

be executed by the contractor and a corporate bonding company licensed to transact such business in the State of Oklahoma and named on the current list of "Surety Companies Acceptable on Federal Bonds", as published in Treasury Department Circular Number 570. The expense of these bonds shall be borne by the Contractor. If, at any time, a surety on any such bond is declared bankrupt or loses its right to do business in the State of Oklahoma or is removed from the list of Surety Companies Acceptable on Federal Bonds, Contractor shall within ten (10) days after notice from the Owner, substitute another bond and surety, both of which must be acceptable to Owner. The premiums on such bond shall be paid by the Contractor. No further payment shall be deemed due nor made until the new surety or sureties shall have furnished an acceptable bond to the Owner.

6.22 ASSIGNMENTS

6.22.1 Neither the Contractor nor the Owner shall sell, transfer, assign or otherwise dispose of the contract or any portion thereof or of any right, title or interest therein or any obligations thereunder without written consent of the other party.

6.23 INDEMNIFICATION

6.23.1 The Contractor will indemnify and hold harmless the Owner and the engineer and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claims, damages, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom, which is caused in whole or in part by any negligent or willful act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

6.23.2 In any and all claims against the Owner or the Engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under the Worker's Compensation Act, disability benefits acts or other employee benefits acts.

6.23.3 The obligation of the Contractor under this paragraph shall not extend to the liability of the Engineer, its agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.

6.24 SEPARATE CONTRACTS

- 6.24.1 The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other contractors' reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the work with theirs. If the proper execution or results of any part of the Contractor's work depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results.
- 6.24.2 The Owner may perform additional work related to the project or the Owner may let other contracts containing provisions similar to these. The contractor will afford the other contractors who are parties to such contracts (or the Owner if the Owner is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate the work with theirs.
- 6.24.3 If the performance of additional work by other contractors or the Owner is not noted in the contract documents prior to the execution of the contract, written notice thereof shall be given to the contractor prior to starting any such additional work.

6.25 SUBCONTRACTING

- 6.25.1 The Contractor may utilize the services of specialty subcontracts on those parts of the work which, under normal contracting practices, are performed by "specialty subcontractors."
- 6.25.2 The Contractor shall not award work to subcontractor(s) in excess of fifty percent (50%) of the contract price or in excess of fifty percent (50%) of the labor and equipment required to install the project without prior written approval of the Owner.
- 6.25.3 The Contractor shall be as fully responsible to the Owner for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as the contractor is for the acts and omissions of persons directly employed by the Contractor.
- 6.25.4 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power regarding termination of any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.

6.25.5 Nothing contained in this contract shall create any contractual relationship between any subcontractor and the Owner.

6.26 ENGINEER'S AUTHORITY

6.26.1 The Engineer shall act as the Owner's representative during the construction period, shall decide questions which may arise as to quality and acceptability of materials furnished and work performed and shall interpret the intent of the contract documents in a fair and unbiased manner. The Engineer will make visits to the site and determine if the work is proceeding in accordance with the contract documents.

6.26.2 The Contractor will be held strictly to the intent of the contract documents in regard to the quality of materials, workmanship and execution of the work. Inspections may be made of the factory or fabrication plant which are the source of material supply.

6.26.3 The Engineer will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.

6.26.4 The Engineer shall promptly make decisions relative to interpretation of the contract documents.

6.27 LAND AND RIGHT-OF-WAY

6.27.1 Prior to issuance of the Notice to Proceed, the Owner shall obtain all land and right-of-way necessary for the carrying out and completion of the work to be performed pursuant to the contract documents, unless otherwise mutually agreed.

6.27.2 The Owner shall provide the Contractor with information that delineates and describes the lands owned and right-of-way acquired.

6.27.3 The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year from the date of substantial completion. The contractor warrants and guarantees for a period of One (1) year from the date of substantial completion of the system that the completed system is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects, including the repairs of any damage to other parts of the system resulting from such defects. The Owner will give notice of observed defects with reasonable promptness. In the event the Contractor should fail to make such corrections, the Owner may do so and charge the Contractor the costs thereby incurred. The performance bond shall remain in full force and effect throughout the guarantee period.

6.28 ARBITRATION BY MUTUAL AGREEMENT

- 6.28.1 All claims, disputes and other matters in question arising out of or relating to the contract documents or the breach thereof, except for claims which have been waived by making an acceptance of final payment, may be decided by arbitration if the parties mutually agree. Any agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final and judgment may be rendered upon it any court having jurisdiction thereof.
- 6.28.2 Notice of the request for arbitration shall be filed in writing with the other party to the contract documents and a copy shall be filed with the Engineer. Request for arbitration shall in no event be made on any claim, dispute or other matter in question that would be barred by the applicable statute of limitations.
- 6.29 The Contractor will carry on the work and maintain the progress schedule during any arbitration proceedings unless otherwise mutually agreed in writing.

6.30 TAXES

- 6.30.1 The Contractor will pay all sales, consumer, use and other similar taxes required by the laws of the place where the work is performed.

7. SUPPLEMENTAL GENERAL PROVISIONS

- 7.1 Public Liability, Property Damage, and Oklahoma Workers' Compensation Insurance
 - 7.1.1 The Contractor shall take out and maintain, during the life of this contract, such Public Liability, Property, and Oklahoma Workers' Compensation Insurance as will protect him and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by himself or by any subcontractor, or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall be as follows:
 - 7.1.1.1 Bodily Injury Liability in an amount not less than one hundred thousand dollars (\$100,000) for injuries including accidental death to any one person, and subject to the same limit for each person in an amount not less than one million (\$1,000,000) for one accident.
 - 7.1.1.2 Property Damage Liability limits shall be carried in the amounts of not less than one hundred thousand dollars (\$100,000) for any one accident, and an aggregate limit of two hundred thousand dollars (\$200,000).
 - 7.1.1.3 Oklahoma Workers' Compensation as determined by statutory limits
 - 7.2 The contractor shall provide Owner's Protective Liability Insurance, with this Owner as the named insured and the Engineer as additional insured, to protect the Owner and the

Engineer against claimed arising out of operations of the contractor and his subcontractor.

- 7.2.1 Bodily Injury Liability in amount not less than one hundred thousand dollars (\$100,000) for injuries, including accidental death, to any one person, and to subject to the same limit for each person in an amount not less than one million dollars (\$1,000,000) for one accident.
- 7.2.2 Property Damage Liability limits shall be carried in the amount of not less than one hundred thousand dollars (\$100,000) for any one accident, and an aggregate limit of two hundred thousand dollars (\$200,000).
- 7.3 The policies of insurance shall be executed by an insurance or indemnity carrier authorized to do business in the state.
- 7.4 Before executing a contract, the Owner will be furnished a binder or certificate of insurance showing the coverage to be in effect.

8. CONTRACT DOCUMENTS

8.1 The Contract Documents

- 8.1.1 The Contract Documents consist of the agreement between the City and the Contractor (hereinafter called the Contract), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, any Addenda issued prior to the execution of the Contract, other documents listed in the Contract and Change Orders issued after execution of the Contract. A change order is a modification of the Contracts on the both parties.
- 8.1.2 The Contract. The Contract documents form the contract for construction. The Contract represents the entire and integrated agreement between the parties thereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract shall be amended or modified only by change order. The Contract documents shall not be construed to create a contractual relationship of any kind (1) between the City and a subcontractor or subcontractor or (2) between any persons or entities other than the City and Contractor.

MINIMUM SPECIFICATIONS
Basketball Court, Playground and Pavilion Installation
Charles McCarroll Park
401 Dexter Street
Marietta, Oklahoma

The City of Marietta is seeking written proposals for the design, supply, and installation of playground equipment, basketball court, pavilion, and other park amenities at Charles McCarroll Park. The project has a budget of \$150,000. All existing facilities will be removed, and the location leveled to finish grade by the City, prior to commencement of improvements pursuant to this request. The project area is relatively flat, with no obstructions, and has dimensions of one hundred twenty (120') feet by one hundred twenty (120) feet.

ITEM DESCRIPTION

1. Playground Area

- a. It is the intention of the City of Marietta to provide a complete playground system, including play apparatus, weed barrier, border, and safety surfacing. The Contractor shall provide all design, materials, incidentals, methods, and labor necessary to furnish a complete play area.
- b. Play equipment shall be accommodate 2-12 age groups (multiple structures may be proposed).
 - i. All proposed play equipment is to be placed inside a single, rigid-bordered safety surfaced area.
- c. Structures shall be metal with poly-plastic accessories and cast in concrete.
- d. Equipment is to be manufactured in USA with immediate access and shipping of replacement parts.
- e. Safety surfaced area shall consist of weed barrier fabric and filled with engineered wood fiber to meet fall requirements for height of all proposed equipment.
- f. Area is to include seating.
- g. Must include ADA accessible, rebar-reinforced, concrete sidewalk, to access other park amenities.

2. Basketball Court Area

- a. It is the intention of the City of Marietta to provide a complete basketball facility, including regulation-size court, backboards and goals, and seating. The Contractor shall provide all design, materials, incidentals, methods, and labor necessary to furnish a complete basketball court area.
- b. Regulation-sized basketball court constructed of rebar-reinforced, concrete with regulation striping.
- c. Two (2) commercial outdoor basketball backstops with regulation goal and net.

- d. Two (2) six (6) foot steel benches with textured polyethylene coating.
- e. Must include ADA accessible, rebar-reinforced, concrete sidewalk, to access other park amenities.

3. Pavilion

- a. It is the intention of the City of Marietta to provide a complete pavilion to provide for picnics and other outdoor celebrations. The Contractor shall provide all design, materials, incidentals, methods, and labor necessary to furnish a complete basketball court area.
- b. Pre-engineered pavilion shall be constructed with metal components, with a minimum 24-gauge metal roof with powder coat steel frame.
- c. The flooring of the pavilion shall be rebar-reinforced concrete.
- d. Must accommodate a minimum of two (2) six (6) foot, ADA accessible, steel picnic tables with attached seats with textured polyethylene coating.
- e. Must include ADA accessible, rebar-reinforced, concrete sidewalk, to access other park amenities.

All designs shall be documented to meet or exceed current CPSC, ATSM, and ADA guidelines and regulations. Equipment with low maintenance and certified by IPEMA will be given preference. The bidder shall include factory warranties and product liability information on all components.

Designs shall be submitted with a presentation ready detailed scaled drawing and written descriptions of components. Computer-generated, three-dimensional renderings are preferred.

Section 10

PROPOSAL

Proposal of _____, (hereinafter "Contractor"), organized under the laws of the State of _____, doing business as _____, to the City of Marietta, (hereinafter called "Owner"). In compliance with your advertisement for Request for Proposal 21-01, Contractor hereby proposes to perform all work to provide design and installation of playground equipment, basketball court, pavilion, and other park amenities at Charles McCarroll Park in strict accordance with the contract documents, within the time set forth therein, and the prices stated below.

A. Contractor acknowledges receipt of the following addenda:

Number _____	Date _____
Number _____	Date _____
Number _____	Date _____

B. Contractor agrees to supply the equipment for Item 1 (playground area), as described in the proposal, for the following lump sum: _____

C. Contractor agrees to supply the equipment for Item 2 (basketball court area), as described in the proposal, for the following lump sum: _____

D. Contractor agrees to supply the equipment for Item 3 (pavilion), as described in the proposal, for the following lump sum: _____

E. Contractor agrees to install supplied equipment according to the proposal, for the following lump sum: _____

Respectfully submitted,

Signature

Company Name

Title

Address

Email

Phone

PROJECT REFERENCES

Contractor shall provide a list of project references of similar projects completed within the past three years.

Reference Name: _____

Company: _____

Address: _____

Phone: _____

Email: _____

Reference Name: _____

Company: _____

Address: _____

Phone: _____

Email: _____

Reference Name: _____

Company: _____

Address: _____

Phone: _____

Email: _____

AUTHORIZED AGENT AFFIDAVIT

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, _____ of lawful age, being first duly sworn upon oath states, that (s)he is the agent authorized by the Contractor to submit the above contract to the City of Marietta, Oklahoma. Affiant further states that the Contractor has not paid, given or donated, or agreed to pay, give or donate to any officer or employee of the City of Marietta, Oklahoma, any money or other thing of value, either directly or indirectly, in the procuring of the Contract.

Bidder

Name and Title

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2021.

Notary Public

Commission Number: _____

Commission Expires: _____

NOTICE OF AWARD

Date: _____

Awarded Bidder:

The City of Marietta has considered the Proposal 21-01 submitted by _____ in response to the Request for Proposal dated May 24, 2021. _____ is hereby notified that your Proposal has been accepted for design and installation of playground equipment, basketball court, pavilion, and other park amenities at Charles McCarroll Park in the City of Marietta, Oklahoma, in the amount of \$_____.

_____ is required pursuant to the Request for Proposal to execute the Agreement and furnish the required contractor 's Maintenance Bond, Statutory Bond, Performance Bond, Certificates of Insurance, and Contract and Agreement within ten (10) calendar days from the date of this Notice.

If you fail to execute said Agreement and to furnish said Bonds and Certificates of Insurance within ten (10) calendar days from the date of this Notice, the City of Marietta will be entitled to consider all your rights arising out of the City's acceptance of _____'s Bid Bond. The City of Marietta shall be entitled to such other rights as may be granted by law.

_____ is required to return an acknowledged copy of this Notice of Award to the City of Marietta.

CITY OF MARIETTA

Dustin Scott, City Administrator

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged this _____ day of _____, 2021.

Signature

Name and Title

PAYMENT BOND
(Page 1 of 3)

OWNER (Obligee):

Name: City of Marietta
Address: 101 W. Main Street
City, State, Zip: Marietta, OK 73448
Email Address: support@mariettaok.city

PRINCIPAL (CONTRACTOR)

Name: _____
Address: _____
City, State, Zip: _____
Email Address: _____

SURETY

Name: _____
Address: _____
City, State, Zip: _____
Email Address: _____

STANDARD AGREEMENT

Date: _____
Amount: _____

BOND

Date: _____
Amount: _____
Number: _____

DATED this _____ day of _____, 2021.

PRINCIPAL:

Signature: _____
Name: _____
Title: _____

(Corporate Seal)

SURETY:

Surety Co. Name: _____
Attorney-in-Fact Signature: _____
Attorney-in-Fact Name: _____

(Surety Seal)

ATTEST:

Notary Signature: _____
Notary Printed Name: _____
Comm. Number: _____

(Notary Seal)

Comm. Expires: _____

PAYMENT BOND
(Page 2 of 3)

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 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 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.

PAYMENT BOND
(Page 3 of 3)

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

PERFORMANCE BOND
(Page 1 of 3)

OWNER (Obligee):

Name: City of Marietta
Address: 101 W. Main Street
City, State, Zip: Marietta, OK 73448
Email Address: support@mariettaok.city

PRINCIPAL (CONTRACTOR)

Name: _____
Address: _____
City, State, Zip: _____
Email Address: _____

SURETY

Name: _____
Address: _____
City, State, Zip: _____
Email Address: _____

STANDARD AGREEMENT

Date: _____
Amount: _____

BOND

Date: _____
Amount: _____
Number: _____

DATED this _____ day of _____, 2021.

PRINCIPAL:

Signature: _____
Name: _____
Title: _____

(Corporate Seal)

SURETY:

Surety Co. Name: _____
Attorney-in-Fact Signature: _____
Attorney-in-Fact Name: _____

(Surety Seal)

ATTEST:

Notary Signature: _____
Notary Printed Name: _____
Comm. Number: _____

(Notary Seal)

Comm. Expires: _____

PERFORMANCE BOND
(Page 2 of 3)

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 described in Paragraph 10 below that the Owner is considering declaring a Contractor Default 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:
 - 4.4.1. 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
 - 4.5. Deny liability in whole or in part and notify the Owner citing reasons therefor.

PERFORMANCE BOND
(Page 2 of 3)

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.
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.

STATUTORY DEFECT BOND
(Page 1 of 2)

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as Principal,
and, _____ as Surety, a corporation organized and existing under the
laws of the State of _____ are hereby held and firmly bound unto the City of
Marietta, as Obligee, in the penal sum of _____ Dollars, lawful money of the
United States of America, for the payment of which sum of money well and truly to be made, the
said Principal and Surety themselves, their and each of their heirs, executors, administrators,
successors and assigns, jointly and severally, by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, THAT:

WHEREAS, said Principal entered into a written contract with the City of Marietta, dated
_____, 2021 for design and installation of playground equipment,
basketball court, pavilion, and other park amenities at Charles McCarroll Park all in compliance
with the plans and specifications thereto, made part of said Contract and on file in the Office of
the City Administrator, 101 W. Main Street, Marietta, OK 73448.

NOW, THEREFORE, if said Principal shall, pay or cause to be paid to the City of Marietta
all damage, loss, and expense which may result by reason of defective materials and/or
workmanship in connection with said work, occurring within a period of two (2) years from and
after acceptance of said project by _____; and if Principal shall pay or
cause to be paid all labor and materials, including the prime contractor and all subcontractors;
and if principal shall save and hold the City of Marietta, harmless from all damages, loss, and
expense occasioned by or resulting from any failure whatsoever of said Principal, then this
obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further 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 the Bond.

IN WITNESS WHEREOF, the Principal has caused these presents to be executed in its
corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has

STATUTORY DEFECT BOND
(Page 2 of 2)

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.

SIGNED, this _____ day of _____, 2021.

PRINCIPAL:

Signature: _____

(Corporate Seal)

Name: _____

Title _____

SURETY:

Surety Co. Name: _____

(Surety Seal)

Attorney-in-Fact Signature: _____

Attorney-in-Fact Name: _____

ATTEST:

Notary Signature: _____

(Notary Seal)

Notary Printed Name: _____

Comm. Number: _____ Comm. Expires: _____

CONSTRUCTION CONTRACT

This CONTRACT AND AGREEMENT made and entered into this ____ day of _____, 2021, by and between the City of Marietta, Oklahoma, a municipal corporation, Party of the First Part, hereinafter termed the "CITY", and _____ Party of the Second Part, hereinafter termed the "CONTRACTOR".

WITNESSETH:

WHEREAS, the City of Marietta has caused to be prepared in accordance with the law, certain plans, specifications, and other proposal documents for the work hereinafter described and has approved and adopted all of said proposal documents, and has caused Solicitation for proposals to be given and advertised as required by law, and has received sealed proposals for a general contractor to furnish: All design, labor, materials, equipment, and supplies necessary to erect a playground, basketball court, pavilion and other amenities, at Charles McCarroll Park as outlined and set out in the May 24, 2021 bidding documents and in accordance with the stated terms and provisions of said contract; and,

WHEREAS, the Contractor, in response to said solicitation for proposals had submitted to the City in the manner and at the time specified, a sealed proposal dated _____, in accordance with the terms of this Contract, which proposal and correspondence is on file in the Office of the City Administrator of the City of Marietta, Oklahoma, and is made a part of this contract as fully as if the same were herein set out at length; and,

WHEREAS, the City, in the manner provided by law, has publicly opened, examined, and canvassed the proposal submitted, and has determined and declared the above-named Contractor to be the lowest, most responsible bidder, on the above-described project, and has duly awarded this contract to said Contractor, for the unit prices named in the proposal.

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants herein contained, the parties to this contract have agreed, and hereby agree, as follows:

1. The contractor shall, in a good and first-class, workmanlike manner, at his own cost and expense, furnish all specified labor, materials, equipment and supplies required to perform and complete said work in strict accordance with this contract, the _____, proposal, and the specification documents, all of which are on file in the Office of the City Administrator of the City of Marietta, Oklahoma, and are made a part of this contract as fully as if the same were herein set out in length, with the following additions and/or exceptions: none.
2. The amount of CONTRACT shall be \$ _____.

3. Ten percent (10%) of all partial payments made shall be withheld as retainage. At any time, the Contractor has completed more than fifty percent (50%) of the total contract amount, the retainage shall be reduced to five percent (5%) of the amount earned to date if the City's duly authorized representative has determined that satisfactory progress is being made.
4. This contract shall not be assigned, sublet, or conveyed in any manner by one party without the express written consent of the other.
5. The contractor shall assume all risks incident to or in connection with any of its activities or operations during the term of this contract and shall be solely responsible for all accidents or injuries of whatsoever nature or kind to persons or property caused by its operations hereunder, and shall indemnify, defend and save harmless the City, its authorized agents and representatives, from any penalties or any violations of any law, ordinance or regulation affecting its operations and from any and all claims, suits, lawsuits, damages or injuries to persons or property of whatsoever kind or nature arising directly or indirectly out of the operations of contractor hereunder or resulting from the carelessness, negligence or improper conduct of the contractor or any of its agents or employees.
6. If contractor shall make default in the performance of any covenant or agreement on the part of it to be performed under the terms of this contract, the City, in addition, to all other remedies provided by this contract or now or hereafter provided by law, may at its option, give contractor notice in writing that it declares this contract and all rights hereunder granted to contractor terminated, or it may pursue other remedies including but not limited to specific performance and damages.
7. On completion of the work, but prior to the acceptance thereof by the City, it shall be the duty of the agency Engineer, or other appropriate person, to determine that said contract has been fully complied with, and upon making such determination, said official shall make his final certificate to the City. The contractor shall insure the obligations incurred by him in connection with the performance of said work have been fully paid and settled; said information shall be in the form of an affidavit, which shall bear the approval of the surety on the contract bonds for payment of the final estimate to the Contractor; thereupon, the final estimate (including retainages) will be approved and paid.
8. The contractor will commence the work required by the Contract Documents within ten (10) calendar days after receipt of Notice to Proceed and complete same within ninety (90) working days, unless the period of completion is extended otherwise by mutual written agreement of all parties to the Contract. The Contractor further agrees to pay as liquidated damages, the sum of Two Hundred Fifty Dollars (\$250.00) per working day thereafter.

9. A sworn, notarized statement must be signed before this contract will become effective.

10. Definitions: The term "Contract Documents" means and includes the following:

- | | |
|---|--|
| A. Notice of Request for Bid | J. Business Relationship Affidavit |
| B. General Conditions of the Contract | K. Notice of Award |
| C. Minimum Specifications | L. Payment Bond |
| D. Addendum, if applicable | M. Performance Bond |
| E. Proposal | N. Statutory Defect Bond |
| F. Project References | O. Construction Contract |
| G. Authorized Agent Affidavit | P. Notice to Proceed |
| H. Affidavit of Work Status Eligibility | Q. Public Liability, Property Damage and Oklahoma Workers' Compensations Insurance Notices |
| I. Non-Collusion Affidavit | |

This Agreement shall be binding upon all parties hereto and their representative heirs, executors, administrators, successors, and assigns.

IN WITNESS HEREOF, the parties hereto have set their hands this _____ day of _____, 2021.

CITY OF MARIETTA

ATTEST:

Kimberly Fraire, Mayor

Dottie Gwin, City Clerk

CONTRACTOR

Signature

ATTEST:

Name and Title

Officer and Title

NOTICE TO PROCEED

To: _____

Date: _____

The City of Marietta has reviewed the required documents submitted by _____ for Proposal 21-01 for design and installation of playground equipment, basketball court, pavilion, and other park amenities at Charles McCarroll Park.

You are hereby notified to commence work in accordance with the Contract and Agreement dated _____, 2021.

CITY OF MARIETTA

Dustin Scott, City Administrator

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged this _____ day of _____, 2021.

Signature

Name and Title