

**CONTRACT NO. 23XXXX**  
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**SECTION I.**

**CITY OF BROKEN ARROW'S**

**STANDARD CONTRACT TERMS**

**AND CONDITIONS FOR A PUBLIC**

**CONSTRUCTION PROJECT**

# CITY OF BROKEN ARROW'S STANDARD CONTRACT TERMS AND CONDITIONS FOR A PUBLIC CONSTRUCTION PROJECT

## 1.0 DEFINITIONS

**1.1** The following Definitions are for terms utilized in the Contract Documents. Whenever these terms appear in any of the Contract Documents relating to this Public Construction Project, the following terms (or pronouns in place of them) and definitions for those terms govern. If a term is defined but is not utilized within any of the Contract Documents for a particular Public Construction Project, then it will not apply.

**1.1.1.** AASHTO means the American Association of State Highway and Transportation Officials.

**1.1.2.** "Actual Savings" is defined as the sum of the total savings realized using the procedures for measured of savings as set forth in Schedule D plus all adjustments and non-measured savings.

**1.1.3.** "Annual Savings Guarantee" is the amount of the Actual Savings that is guaranteed by ESCO for a twelve (12) month period beginning on the Savings Guarantee Commencement Date and any subsequent twelve (12) month anniversary thereafter.

**1.1.4.** Addenda means any additional or supplemental documents, which were not included with the Bid packet and are usually written interpretations or modifications of the Contract Documents, provided prior to Bid opening.

**1.1.5.** ASTM means the American Society of Testing and Materials.

**1.1.6.** AWWA means the American Water Works Association.

**1.1.7.** Bid means the Bidder's Proposal with all documents attached thereto by the Bidder, submitted by the Bidder to perform the Work, which Bid shall become a part of the Contract Documents upon becoming successfully awarded to the Bidder.

**1.1.8.** Bidder means any person, partnership, joint venture or corporation submitting a Proposal for performing the Work. The terms Contractor and Bidder are synonymous.

**1.1.9.** Bond(s) mean(s) the Performance Bond, Payment Bond or Maintenance Bond if applicable furnished by the Contractor and the Surety to the City as a guaranty that the Contractor will enter into a Public Construction Contract with the City and completely perform the Contract according to its terms and conditions.

**1.1.10.** City means the City of Broken Arrow, Oklahoma, a municipal corporation or any of its Trusts or Authorities as indicated by the entity executing this Contract, its duly elected and qualified governing body and/or its agents and officers duly authorized to act for the City or to represent the City relative to this Contract and to perform the powers and duties specified by the City hereunder.

**1.1.11.** Change Order(s) mean(s) a written order to the Contractor for Extra Work, increases or decreases in Contract quantities and additions or alterations to the Plans or Specifications, within the scope of the Contract.

**1.1.12.** Construction Project means the Public Construction Project for which the Work is to be completed under the Contract Documents.

1.1.13. Contract means the Public Construction Contract, executed by the parties, which pertains to the performance of and the furnishing of labor and materials for the Work on the Public Construction Project. The Contract includes all of the Contract Documents, whether attached thereto or incorporated by reference.

1.1.14. Contract Administrator means the City representative primarily responsible for administration and oversight of the Contract.

1.1.15. Contract Documents mean all the documents included in the Bid Packet, which includes, but is not limited to, the Investment Grade Audit as it applies to Schedule A Scope of Work, Notice to Bidders, Invitation to Bid, Instructions to Bidders, Proposal Form, Performance Bonds, Statutory Bonds, Maintenance Bonds, the successful Bidder's Bid, City of Broken Arrow's Standard Contract Terms and Conditions for Public Construction Projects and the Plans and Specification, other Drawings, Supplemental Agreements, Supplemental Plans and Specifications, other Drawings and/or other data and may also refer to the unsigned forms of such documents.

1.1.16. Contractor means the corporation, partnership, company, firm or individual, named and designated in the Contract and who has entered into this Contract or the performance of the Work covered thereby and/or the Contractor's duly authorized agents and other legal representatives. The terms Contractor and Bidder are synonymous.

1.1.17. Days mean calendar days unless otherwise specified.

1.1.18. Drawings means and includes all Drawings, Plans or other Drawings submitted by the successful Bidder with the successful Bidder's Proposal and used as a basis for the successful Bid; all Drawings by the Contractor when and as approved by the Contract Administrator and/or Engineer.

1.1.19. ECMs” and each, an “ECM”, means the equipment, devices, materials, and/or software to be acquired and installed by the Contractor and all related services as described in the attached Schedules.

1.1.20. Engineer means the Bidder's designated engineer responsible for design and oversight of the work.

1.1.21.“Excess Savings” is the amount of Actual Savings in excess of the Performance Guarantee to date including any savings achieved during construction.

1.1.22. Extra Work means, Work that is unforeseen or Work made necessary by alteration of Plans and Specifications or necessary to complete the Work for other reasons, for which no specific prices or compensations are provided in the Contract. Extra Work shall be performed by the Contractor in accordance with the Plans and Specifications and as directed; provided, however, before any Extra Work is started, a written order from the Contract Administrator shall be delivered to the Contractor to do the Extra Work.

1.1.23.“Guarantee Year” is the twelve (12) month period beginning on the Savings Guarantee Commencement Date and each subsequent twelve (12) month anniversary thereafter.

1.1.24. Inspector means the technical inspector or inspectors duly authorized by the Contract Administrator, assigned to make a detailed inspection of any or all portions of the Work, or materials thereof.

1.1.25. Investment Grade Audit or “IGA” shall mean the services provided under separate agreement wherein the Contractor set forth, among other things, (a) an assessment of the characteristics of the Project Site(s), (b) an analysis of energy, water, operations, and wastewater related to the Project Site(s), and (c) recommendations to achieve cost and/or energy, water, operations, and wastewater savings.

1.1.26. Laboratory means the laboratory or laboratories employed by the Contractor for testing the materials used in the Work.

1.1.27. Lump Sum means the price or an item of Work including all things necessary to complete the item as shown on the Plans and Specifications. Such an item is not measured in units but is defined by description.

1.1.28. Maintenance Bond means the Surety Bond that secures that the Work performed was in accordance with the Contract Documents and that for a period of one year time after completion of the Work the Contractor will continue to perform repairs on the Project arising from any failures or defects in materials or workmanship or asset set out in the Contract Documents. A Maintenance Bond will only be required if the Performance Bond does not cover the one (1) year warranty period

1.1.29. Materials mean all raw and prepared materials and manufactured and fabricated products entering into the finished Work.

1.1.30. Notice to Bidders means the notice provided by the City to Bidders to inform them of the Public Construction Project and Work contemplated by this Contract.

1.1.31. Payment Bond means the Surety Bond that secures payment to all laborers, material suppliers and subcontractors per the applicable contractual obligations.

1.1.32. “Performance Guarantee Term” is defined as the period beginning on the Savings Guarantee Commencement Date and extending through the time period as defined in the Performance Guarantee.

1.1.33. “Performance Guarantee” is the sum of the Annual Savings Guarantee for each year of the guarantee term as set forth in Schedule C unless terminated earlier in accordance with the Contract Documents.

1.1.34. Plans and Specifications means those specific items or Drawings identified for this Public Construction Project regarding construction equipment, construction details, material details, details pertaining to the methods of manner of performing the Work, the equipment to be used, or to the quantities or qualities of materials to be furnished for the Work, which are bound into and are a part of the Contract Documents. They also include the official Drawings or Plans and the profiles, typical cross sections, general cross sections, working Drawings and supplemental Drawings, or exact reproductions thereof, prepared or approved by the Engineer, which show the location, character, dimensions and details of the Work.

1.1.35. Project means the Public Construction Project and the Work contemplated by this Contract.

1.1.36. Project Engineer means the Professional Engineer, employed by the Bidder, responsible for interpreting Plans and Specifications and/or Drawings for the Project.

1.1.37. Proposal means the offer of the Bidder to perform the Work, when completed and submitted on the prescribed Proposal Form, properly signed.

1.1.38. Proposal Form means the Investment Grade Audit Report, prepared and submitted by the Bidder to make a formal Bid for the performance of the Work.

1.1.39. Public Construction Project means any one of the numerous Projects commenced by the City and paid for out of public funds. It may include any number of parts or divisions, which the Work is divided for the purpose of awarding Public Construction Contracts. Any one (1) Public Construction Contract may, when provided for in the applicable Notice to Bidders, cover Work for more than one Public Construction Project.

1.1.40. Public Road means any road, highway, street, alley or way, which is open or has been dedicated to be used by the public, regardless of by whom, or by what agency or divisions of government, it is owned, controlled or maintained.

1.1.41. "Savings Guarantee Commencement Date" means the first day of the first utility billing period following the month in which Contractor delivers to City the final Substantial Completion Letter.

1.1.42. Special Provisions means the portion of the Contract setting forth terms and conditions or requirements peculiar to the Work or materials involved in the Proposal and not satisfactorily or completely covered by the Standard Contract Terms and Conditions or the Supplementary Plans and Specifications or may be utilized for setting out additional terms and conditions and/or covenants of the Contract.

1.1.43. Statutory Performance Bond means the Surety Bond that secures the Work will be done in accordance with the Contract Documents, which includes the furnishing of all necessary tools, equipment, material and labor, in accordance with the Contract Documents. The Performance Bond and, if applicable, the Maintenance Bond, do not apply to any energy savings which is not considered part of the Work for purposes of said bonds.

1.1.44. Subcontractor means any person, partnership, joint venture or corporation undertaking to perform any part of the obligations of the Contractor, with the written consent of the Contract Administrator.

1.1.45. Substantial Completion means the point at which the Work is operational, ready for use by the City and fully complete except for minor adjustments and/or corrections.

1.1.46. Superintendent means the executive representative of the Contractor, present on the Work at all times during its progress, authorized to receive and fulfill instructions from the Engineer, and capable of superintending the Work efficiently.

1.1.47. Supplemental Agreements means written agreements executed by the Contractor and by the City covering alterations necessary to the Work, as hereinafter provided.

1.1.48. Supplemental Plans and Specifications means additions to and amendments of the General Specifications. Included in them will be construction and materials Specifications, and provisions regarding pay items, relating to the Work. Only those portions of the Supplemental Specifications, which are specifically mentioned in the Notice to Bidders or the Proposal, constitute a part of the Contract Documents.

1.1.49. Surety means the corporate body which, or the individual or individuals who, is bound with and for the Contractor under the Performance Bond for the performance of the Contract according to its terms, under the Payment Bond as required by law, the Warranty Bond for the

performance of Contractor's one (1) year warranty period if not covered under the Performance Bond according to its terms. A Surety company authorized to do business in the State of Oklahoma, having a local representative, and satisfactory to the City, will be required as Surety on the required bonds.

1.1.50. Surety Bonds means the Performance Bond, Payment Bond, if applicable the Maintenance Bond and, if applicable, the Bond required by the Oklahoma Tax Commission for non-resident contractors and non-resident subcontractors.

1.1.51. MUTCD means the Manual on Uniform Traffic Control Devices for Streets and Highways, most current edition.

1.1.52. Unit Price means the price per specified unit of measurement of Work and/or material.

1.1.53. Work means all work specified in the Specifications or indicated on the Plans for the contemplated construction and covered by the Contract.

1.2. Whenever the words "as ordered", "as permitted", "as directed", or words or phrases of like significance are used, it is understood by the parties that the order of directions, requirements, permissions or allowances of the Contract Administrator govern.

1.3. Similarly, the words, "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory" or words of like effect and significance, unless otherwise specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory as in the judgment of the Contract Administrator.

## **2.0      SCOPE**

2.1. The Contract Terms and Conditions, which follow, are general in scope and may refer to conditions that will not be encountered in the performance of the Work included in this Public Construction Contract and are therefore not applicable hereto. Any Terms and Conditions, requirements, provisions or other stipulations of the Contract Documents, which pertain to a nonexistent condition and are not applicable to the Work performed hereunder, shall have no meaning to the Contract. All Terms and Conditions, requirements, provisions or other stipulations that are encountered in the performance of the Work or are significant to the Terms and Conditions of the Contract shall fully apply and be strictly adhered to.

2.2. The Plans and Specifications are intended to supplement, but not necessarily duplicate each other and together constitute one (1) complete set of Plans and Specifications, so that any Work exhibited in the one and not in the other shall be executed just as if it had been set forth in both, so that the Work shall be completed according to the complete design or designs as decided and determined by the Engineer.

2.3. Should anything be omitted from the Plans and Specifications that was not previously identified prior to the Contract being awarded to the Contractor and which is necessary for a clear understanding of the Work or it appears that various instructions are conflicting, then the Contractor shall request written instructions from the Contract Administrator to clarify such omissions or discrepancies.

2.4. The Plans and Specifications and all Supplemental Documents including all Schedules attached hereto are an essential part of the Contract and a requirement appearing in one is as binding as if it appeared in all. All Contract Documents are intended to be complementary to complete the Work.

2.4.1. In case of a discrepancy in the dimensions, the governing ranking will be: 1) the IGA, 2) Plans and Specifications Dimensions; 3) Calculated Dimensions; 4) Standard Specifications; 5) Standard Plan Sheets; 6) Scaled Dimensions.

2.4.2. In case of a discrepancy in the information, the governing ranking will be: 1) the IGA,

2) Plans and Specifications; 3) Supplemental Specifications; and 4) Standard Plan Sheets.

2.4.3. The Schedules attached to the Contract shall govern over all Contract Documents except Amendments or modifications to the Contract authorized by the City and executed by the parties.

2.5 Cybersecurity Not in Scope. Contractor's scope does not include the implementation and/or maintenance of a security program to protect the City's networks, systems, data, or other assets (including the deliverables provided under the Contract) against security threats. Contractor shall not be responsible for any losses or damages that may result from the City's failure to maintain its own security program in accordance with industry standards or to promptly follow Contractor's guidance with respect to the deliverables (i.e., by installing recommended updates or patches), whether provided via Contractor's security notification webpage at <https://www.se.com/ww/en/work/support/cybersecurity/security-notifications.jsp> or otherwise.

### **3.0 CONTRACT ADMINISTRATOR'S POWER AND DUTIES**

3.1. The Contract Administrator shall give all orders and directions contemplated under the Contract Documents relative to the execution of the Work. The Contract Administrator and the Contractor shall negotiate the amount, quality, acceptability and fitness of the several kinds of work and materials, which are to be paid for under this Contract and shall jointly confer as to all questions relative to said Work and the construction thereof.

3.2. The Contract Administrator and Project Engineer shall decide the meaning and intent of any portion of the Plans and Specifications or Drawings, where the same may be found obscure or be in dispute; and the Contract Administrator and Project Engineer shall have the right to correct any errors or omissions therein when such corrections are necessary to properly perform the intent of Plans and Specifications or Drawings. Any such corrections shall be implemented immediately from the time that the Contract Administrator gives notice, in writing thereof, to the Contractor.

3.3. Any differences or conflicts, which may arise between the Contractor and other contractors with the City in regard to the Work to be performed under this Contract shall be determined and resolved by the Contract Administrator.

3.4. Nothing in this Section 3 shall be construed as authorizing any changes to the Contract that increase the Contract cost to the City, decrease the aggregate value of the materials furnished to the City or increase the time of completion. Such changes to the Contract can only be made in writing and shall be executed by the parties in the manner set out herein.

3.5. Nothing in this Section shall be construed to forbid conferences between the Contractor and the City in the case of actual disputes with the Contract Administrator; provided that the Contract Administrator and the Contractor must negotiate in good faith in an attempt to resolve any disputes prior to and as a condition for such issues being raised and discussed with the City. The City reserves the right to require the Contract Administrator and the Contractor to agree upon any proposed changes or to get a full and complete report from both the Contractor and the Contract Administrator and reserves the right to conduct an independent investigation prior to responding to any dispute that cannot be resolved between the Contract Administrator and the Contractor.

3.6. The Contract Administrator and Project Engineer shall decide all questions, which may arise as to the quality or acceptability of materials furnished and Work performed, as to the manner of performance and rate of progress of the Work, whether or not such questions involve the interpretation of the Plans and Specifications. The Contract Administrator's and Project Engineer's decision on such questions shall be final and the Contract Administrator and Project Engineer shall have executive authority to enforce and make effective such decisions and orders.

#### 4.0 TIME FOR COMPLETION

4.1. The Work shall be commenced within thirty 30 days from and after the date of written order from the City. The Contractor agrees that the Work shall be prosecuted regularly, diligently and uninterruptedly at a uniform rate of progress to ensure completion within 365 days from Date of Commencement (the "Contract Time"), subject to adjustments of this Contract Time as provided in the Contract Documents.. It is understood and agreed that the said time for the completion of the Work described herein is a reasonable time for the completion of the same.

4.2. If required by the Contract, the Contractor shall furnish the Contract Administrator with a proposed progress schedule, in a format approved by the Contract Administrator, setting forth in detail the procedure the Contractor proposes to follow, giving the dates that the Contractor expects to start and complete separate portions of the Work. If the Contract Administrator deems it desirable, the Contract Administrator may require the Contractor to furnish revised progress schedules not less often than quarterly. Such revised progress schedules shall show the start dates and the completion dates (or proposed completion dates) of all or any portion of the Work that such a revised schedule is required.

4.3. Time is of the essence for completion of this Contract. If the Contractor fails to complete the Work within the time specified, then the Contractor agrees to pay the City, not as penalty, but as liquidated damages for such breach of Contract, the amount set forth in the Contract Documents for each day of failure to complete the Work after the specified time set forth in the Bid Proposal. In the event the Contractor does not maintain the Work schedule approved by the Contract Administrator, a sum equal to the liquidated damages for the number of days Contractor is behind schedule may be retained by the City out of the amounts due the Contractor from time to time, to guarantee the City against losses by reason of the failure of the Contractor to complete the Work or any part thereof in the time provided herein. The amount of damages finally determined to be due may be withheld from any sums finally determined to be due Contractor hereunder, or otherwise.

4.4. If the Plans and Specifications set a definite and certain time for the performance of any act and the Contract allows additional time for the completion of any Work, the additional time for completion shall govern in this Contract.

4.5. Should the Contractor be delayed in the final completion of the Work by any act or neglect of the City or Contract Administrator or by any employees of either or by strikes, injunctions, fire or other force majeure and in the opinion of the Contract Administrator such delay could not have been anticipated or avoided, then an extension of time sufficient to compensate for such delay shall be granted by the City, provided, however, that the Contractor shall give the City and the Contract Administrator notice in writing of the cause of delay within ten (10) days of the occurrence of the event that caused the delay.

4.5.1. Force Majeure includes an "Act of God" such as an earthquake, flood, fire, cloudburst, cyclone or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or to make preparation in defense against, strikes or labor disputes, unusual shortages in the available supply of and/or unusual increases in the cost of materials or equipment needed for performance of the Work, or delays of common carriers, civil commotion or war, epidemics, pandemics, and any other causes beyond the control of the Contractor. A rain, windstorm or other natural phenomenon of normal intensity, based on U.S. Weather Bureau reports, for the particular locality and for the particular season of the year in which the Work is being done, shall not be construed as an Act of God and no extension of time will be granted for the delays resulting there from. No extension of time will be granted for any delay or suspension of the Work due to the fault of the Contractor. No extension of time on account of a delay due to unforeseen causes will be granted if a written request is not filed with the Contract Administrator within ten (10) business days of the date of the occurrence of the Force Majeure event.

4.6. The City shall not be liable or responsible to the Contractor, Surety or any other person for or on account of any Work stoppages or delays arising out of an injunction or any other kind of legal or equitable proceeding or from, by or on account of any other cause whatsoever.

4.7. If the Contract be amended in any material respect and the City determines that such amendment will cause delay in the completion of the Work, the City shall postpone the completion time by the number of days it determines to be equitable.

4.8. If the Contract Administrator suspends the Work in whole or in part the Contract Administrator shall postpone the time for completion of the Work by the number of days, if any, that the Contract Administrator determines to be equitable.

4.8.1. The Contract Administrator may instruct the Contractor to delay the start of the Work or suspend the operations in whole or in part for the length of time the Contract Administrator may deem necessary because of conditions that the Contract Administrator considers unfavorable for commencement of the Work. In such an event, the Contractor shall start or resume the Work when notified to proceed by the City Contract Administrator.

4.9. If the Contractor fails to perform or complete any of the Work to the reasonable satisfaction of the City within any of the times allowed by the Contract, or within 30 days of receipt of written notice from the City, whichever is longer, or if the Contractor fails to discharge any of the material Contract obligations, and such failure is not corrected by Contractor within 30 days of receipt of written notice from the City, the City may, upon written notice to the Contractor, terminate the Contract. Failure of the City to exercise its rights to terminate shall not be deemed a waiver of said right or any other rights or privileges hereunder or by law with respect to any continuing or subsequent breaches of this Contract.

4.9.1. If the City terminates the Contract as provided herein, no payments of any type, other than payment due and payable at the time of termination shall thereafter be made to the Contractor. The default in completing the Work within the time allowed by the Contract will result in the payment of liquidated damages that accrued up to the point of termination. The City shall recover liquidated damages by deducting the amount thereof out of any monies due or that may become due the Contractor and if said monies are insufficient to cover said damages, then the Contractor or the Surety shall pay the amount due.

## 5.0 LIQUIDATED DAMAGES

5.1. Liquidated damages for this Contract are the sum of **Five Hundred dollars and no cents** (\$ **500.00**) per day for each day the Contractor exceeds the Contract time for completion, such amount not to exceed 15% of the value of the Contract. This amount is fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages sustained by the City in such event and shall constitute the City's exclusive remedy for Contractor's failure to complete the Work within the time for completion.

## 6.0 CONTRACTOR'S DUTIES AND RESPONSIBILITIES REGARDING THE WORK

6.1. If applicable, The Plans and Specifications, created by the Engineer, that indicate general outlines and details necessary for a comprehensive understanding of the Work are part of the Contract and will be provided to the Contract Administrator's office. The Contractor shall keep one copy of each at the site of the Work. The Work shall be constructed in all respects in compliance with requirements of the Plans and Specifications. The approved Plans and Specifications will be supplemented by working and Supplemental Drawings as necessary to adequately define the requirements and information given on the approved Plans and Specifications. No changes shall be made on any Plan and Specification or Drawing

after the same has been prepared or approved by the Engineer, except on the direction of the Engineer.

6.1.1. The Contractor shall furnish, on sheets of the size required by the Engineer, such working Drawings not furnished by the City as may be required by the Engineer for any part of the finished construction. Upon completion of the Work, the Contractor shall deliver to the City a complete set of said Drawings on a good-quality bond paper. Shop Drawings may be submitted in pencil on a good grade of tracing paper.

6.1.1.a. The compensation of the Contractor for furnishing all working Drawings shall be included in the prices Bid for the various scheduled items.

6.1.2. Working Drawings for any structure shall consist of such detailed Supplemental Plans and Specifications as may be needed for the prosecution of the Work and which are not included in the Plans and Specifications furnished by the City. They shall include shop details, erection plans, masonry-layout diagrams and bending diagrams for reinforcing steel and must be approved by the Engineer before any Work involving these Supplemental Plans and Specifications shall be performed. Plans for cribs, cofferdams, falsework, centering and formwork may be required by the Engineer, and in such cases shall be likewise subject to approval, unless approval be waived by the Engineer.

6.1.3. It is expressly understood and agreed that approval by the Engineer of the Contractor's working Drawings does not relieve the Contractor of any responsibility for accuracy of dimensions and details. The Contractor shall be responsible for obtaining the approval by the Engineer of his working Drawings and for their conformity with the Plans and Specifications.

6.2. If any Work consists of repairs, extensions, or alterations of existing structures, the Contractor shall make measurements of prior construction as may be required to accurately join the old construction with the new Work. Any measurements, which may appear in the Plans and Specifications that indicate the extent and nature of such repairs, extensions and alterations, shall not relieve the Contractor of this responsibility.

6.3. Finished surfaces in all cases shall conform to lines, grades, cross sections and dimensions shown on the Plans and Specifications. Any deviations from the Plans and Specifications and approved working Drawings may be required by the exigencies of construction and will in all cases be determined by the Engineer and authorized in writing.

6.4. The Contractor shall give the Work the constant attention that is necessary to facilitate the progress thereof and shall cooperate in every way possible with the Contract Administrator, Engineer, other Contractors, public agencies, railroads, public utilities and all other agencies and persons involved in the Work. The Contractor shall at all times have a competent Superintendent, capable of reading and thoroughly understanding the Plans and Specifications, who shall act as the Contractor's agent for the Work and who shall receive instructions from the Contract Administrator or Engineer.

6.4.1. Such Superintendent shall have full authority to execute and shall execute the orders and directions of the Contract Administrator without delay and shall promptly supply such materials, tools, equipment, and labor as may be required. Such Superintendent shall be furnished irrespective of the amount of Work sublet.

6.5. If applicable, The Engineer will furnish survey data and benchmarks for the Work. The Contractor shall stake lines, grades, structures and temporary benchmarks and shall lay out from the Work to be performed under this Contract. The Contractor shall be responsible for the finished Work conforming to the lines, grades and benchmarks given by the Engineer. The Contractor shall establish offset base lines, reference points, slope stakes, supplementary benchmarks and any other horizontal and vertical control not established by the Engineer. The cost to the Contractor of laying out the Work as above described shall be included in the amounts Bid for the various scheduled items. The Contractor shall notify the

Engineer in writing not less than five (5) days in advance, when benchmarks and section lines are required. Each request for stakes and other engineering services described herein shall, except in emergency, cover sufficient Work for not less than one (1) full day of the workforce needed for the Work. The Contractor shall exercise care in the preservation of stakes and benchmarks set for the Work. If any such stakes or benchmarks be damaged, lost, displaced or removed by the Contractor, the Contractor shall have them reset at the Contractor's expense.

6.6. If applicable to the Work, The Contractor shall furnish the Engineer, laboratory representative and Inspectors with every reasonable facility for ascertaining whether or not the Work performed and materials used are in accordance with the requirements of the Contract. If the Engineer requests, the Contractor shall at any time before final acceptance of the Work remove or uncover such portion of finished Work as may be specified. After examination by the Engineer, the Contractor shall restore said portions of the Work to the standard required by the Plans and Specifications. Should any portion of the Work thus exposed and examined prove acceptable, the uncovering or removing and the replacing of the covering or making good of the portion removed, will be paid for as Extra Work but should any portion so exposed and examined prove unacceptable, the uncovering or removing and the replacing of the covering or making good of the portion removed, shall be at the Contractor's expense. No Work shall be done nor materials used without suitable supervision by the Contractor or without inspection. Failure of the City to reject any defective Work or materials shall not in any way prevent later rejection when such defects are discovered.

6.6.1. When any railroad corporation is directly affected by the Work, the Work shall be subject to the inspection of its representatives. Such inspection shall not make the railroad corporation a party to this Contract, and will in no way interfere with the rights of either party hereunder.

6.7. Where applicable, Holes resulting from the removal of test cores shall be refilled by the Contractor with materials similar to that of the cores and be compacted and finished to conform to the surrounding construction. The cost of such Work shall be included in the amount of the Bid for the various scheduled items.

6.8. The Contractor, at his own expense, shall remedy, remove and/or replace all rejected Work in a manner reasonably acceptable to the Contract Administrator. Any Work done beyond the lines and grades shown on the Plans and Specifications or as given by the Engineer, except as herein provided, or any Extra Work done without authority, will be considered as unauthorized and at the expense of the Contractor, and will not be measured or paid for. Should the Contractor fail to remedy, remove and/or replace the rejected Work within 30 days of receipt of notice of rejected Work, the Contract Administrator shall have authority to cause any rejected Work to be remedied, removed or replaced and any unauthorized work to be removed and the costs thereof shall be deducted from any monies due or to become due to the Contractor.

6.9. The Contractor shall be responsible for all damages caused by his equipment or operations. No loads shall be placed or permitted on a pavement or base before the expiration of the curing period.

6.10. With respect to all Work performed under this Contract, the Contractor shall:

6.10.1. Comply with the safety standards provisions or applicable laws, building and construction codes and the requirements of the Occupational Safety and Health Act of 1970 (Public Law 91-596), as amended and the requirements of Title 20 of the Code of Federal Regulations, Section 1518 as published in the "Federal Register", Volume 36, No. 75 - Saturday, April 17, 1971, as amended.

6.10.2. Exercise every reasonable precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.

6.10.3. Maintain at the Contractor's office or at an obvious location at the job site, all items necessary for giving first aid to anyone injured on the job site. In no case shall the Work commence until the Contractor has made standing arrangements for removal of injured persons to a hospital or a doctor's care.

6.10.4. During the performance of the Contract, if any operation, practice or condition is deemed unsafe by the Contract Administrator, the Contractor, when advised by the Contract Administrator, shall take any necessary corrective actions as shall be appropriate in the circumstances or as shall be directed by the Contract Administrator.

6.10.5. Nothing in the foregoing paragraphs shall be construed as relieving the Contractor from full responsibility for the safe prosecution of the Work at all times.

6.11. If applicable, The Contractor shall provide all necessary pumps, drains, ditches and other means for removing water from the site of the Work, and shall satisfactorily remove the water. Contractor shall provide additional pumps or drains at any place where the Contract Administrator deems them necessary.

6.12. If performing the Work in any way involves cutting, obstructing, or otherwise making impassable, with safety, the traveled surfaces of any existing Public Road, the Contractor shall construct or otherwise provide and maintain in safe and passable condition, such detours, by-passes and temporary approaches, without undue delay to the traffic that passes over such Public Road. In all such cases, while performing the Work that in any way impedes traffic or endanger persons or property moving over Public Roads, the Contractor shall provide flagmen and warning signs and all other traffic and safety controls, as may be necessary for adequate protection of the traveling public against all hazards created or involved in performing the Work. The maintenance of a temporary way in a safe and passable condition shall include prompt snow removal and de-icing. When the Work affecting any Public Road prevents normal ingress to and egress from any lands abutting such Public Road, the Contractor shall construct or otherwise provide and maintain in safe and passable condition, temporary means of ingress to and egress from such lands; these shall be so maintained until the original means of ingress and egress are restored by the Contractor or until any permanent alternative means of ingress and egress required by the Plans and Specifications shall have been constructed and open to travel.

6.12.1. Unless and to the extent otherwise specifically provided in the Proposal, the cost of maintenance of local traffic shall be included in the amounts Bid for various scheduled items.

6.13. The Contractor shall provide for the removal of all dirt and materials that are spilled on existing pavements over which the dirt or materials are hauled or washed or otherwise deposited from the trucks utilized in performing the Work and whenever in the opinion of the Contract Administrator or the City of the existing pavement, the accumulation is sufficient to cause the formation of mud, interfere with drainage or create a traffic hazard.

6.14. All fences, buildings, non-used structures and obstructions of any character to the construction of the Work, which are within the limits of the right-of-way, shall be removed or otherwise disposed of by the Contractor.

6.15. The Contractor, subject to the approval of the Contract Administrator, may use in the performance of the Work, such stone, gravel, sand and other materials as may be found in any excavation, which the Contractor is required to make, and will be paid for the excavation of such materials, at the Contract prices therefor. However, the Contractor shall replace such materials, at their own expense, with other suitable material all of that portion of the material so removed and used as was provided in the Plans and Specifications to be used in embankments, backfills, approaches or otherwise. No charge for materials so used will be made against the Contractor except the replacement herein provided for. The Contractor shall not excavate nor remove any material from within the right-of-way, which is not a required excavation as

indicated by the slope and grade line, without written authorization from the Contract Administrator.

6.16. Immediately upon completion of any portion of the Work, the Contractor shall restore all fills, topsoil and utilities to their location and condition prior to construction.

6.17. The City reserves the right to do work by other contractors or by City forces and to permit public utility companies and others to do work during the progress and within the limits of or adjacent to the Work. The Contractor shall conduct his Work and cooperate with such other parties so as to cause as little interference as possible with such other work and as the Contract Administrator may direct. If there is a difference of opinion as to the respective rights of the Contractor and others doing work within the limits of or adjacent to the Work, the Contract Administrator will decide as to such rights in order to secure the completion of the Work. The Contract Administrator's decision shall be final and binding on the Contractor unless such decision was arbitrary and capricious.

6.18. Upon commencing the Work, the Contractor shall have suitable photographs, or digital imaging satisfactory to the Contract Administrator, taken on or about the first of each month showing the general condition of the Work. Copies of each view shall be supplied to the Contract Administrator, without charge, as soon as practicable after the first of each month. The City shall retain the negatives or discs. The cost of furnishing the photographs shall be included in the amounts Bid for the various scheduled items

6.19. Upon the presentation an authorized permit, which provides that all necessary repair work will be paid for by the party to whom such permit is issued, the Contract Administrator may authorize the Contractor to allow the party bearing such permit to make openings in the Work or in public roads crossing the Work.

6.20. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of the Contractor's employees and City representatives to comply with the requirements and regulations of the Oklahoma Department of Health, Oklahoma Department of Environmental Quality, and other authorities having jurisdiction and shall commit no public nuisance. Portable facilities shall be provided at the Work sites.

6.21. No public road shall be closed to the public until the Contract Administrator has authorized such action in writing.

6.21.1. The Contractor shall notify the Contract Administrator in writing at least ten (10) days in advance of the date proposed to close any portion of a public road.

6.21.2. Unless otherwise indicated on the Plans and Specifications or in other Contract Documents, the width of the traveled roadway on the approaches to any bridge supporting a Public Road shall be not less than the width of the roadway of the bridge itself.

6.21.3. Materials stored upon the Right-of-Way or elsewhere shall be placed in a manner that causes no obstruction to the traveling public.

6.21.4. The Contractor shall furnish, erect, maintain and upon reopening the public road shall remove all barricades, Temporary Route, Road Closed, Load Limit, Warning and other required sign used for temporary routes or road closures. These signs, when utilized, including the signs utilized to close Public Roads at each point where traffic leaves it, shall be lighted and maintained by the Contractor.

6.21.5. When any Public Road is closed, the Contractor shall provide, erect and maintain barricades, approved by the Contract Administrator. The Contractor shall also provide, erect and maintain suitable and sufficient lights and danger signals (1) at the limits of each closed portion,

(2) where other Public Roads intersect the Work and (3) at such other points as are shown on the Plans and Specifications, in accordance with the MUTCD.

6.21.6. When any Public Road is under construction, serving as a detour or is being used by the traveling public, the Contractor shall maintain, by the use of labor, equipment and materials, that portion of the Public Road being so used that it shall be kept smooth and free from holes, ruts, ridges, bumps, and dust, and it shall be sloped and provided with the necessary outlets to drain freely, including during periods of suspension of the Work. The Contractor shall maintain all structures on such portions of such Public Roads in a condition for safe and convenient use. The Contractor shall also furnish and maintain such guardrails, temporary guide markers as described in the MUTCD, lights, signs, other traffic-control devices, and flaggers as may be necessary to maintain safe traffic conditions. The Contractor may furnish, erect and maintain such additional signs and safety devices as they deem essential and as approved by the Contract Administrator.

6.21.7. The installation and operation of all traffic-control and safety devices shall conform to the requirements of the latest and current edition or revision of the MUTCD.

6.21.8. All flaggers furnished for the protection of the public and direction of traffic shall wear high-visibility safety apparel conforming to the MUTCD at all times during the performance of their duties. Flaggers shall be properly trained and shall perform their duties in a courteous manner to ensure the safety and convenience of the traveling public within the limits of the traffic controlled area. The Contractor shall immediately correct any deficiency in number, equipment or procedure of flaggers which is brought to their attention by the Contract Administrator or otherwise.

6.21.9. Each flagger shall be supplied with the necessary equipment.

6.21.10. Between the hours of sunset and sunrise, each flagger shall be equipped with retro-reflectorized or lighted equipment conforming to the MUTCD. Except in emergency situations, flagger stations shall be illuminated at night.

6.21.11. At locations where workers and equipment are adjacent to the part of the highway used by the traveling public, construction and maintenance signage shall be installed in accordance to the MUTCD.

6.21.12. Whenever it is necessary to divert the flow of traffic from its normal lanes of travel into another lane of travel, the lane of travel for such diverted traffic shall be clearly delineated by temporary guide markers or barricades. On tangents, the temporary guide markers shall be spaced no farther apart than two hundred (200) feet; and on curves, as directed by the Contract Administrator. Between the hours of sunset and sunrise each temporary guide marker, unless suitably reflectorized, shall be illuminated by a warning lights placed on top of it, and each barricade shall be illuminated by sufficient warning lights and marked by reflectorized devices to make the temporary guide marker clearly visible. All markers, warning lights and reflectorized devices shall be furnished and maintained by the Contractor.

6.21.13. The Contractor may, in lieu of flaggers supplementing them, install and operate a manually controlled signal approved by the Contract Administrator. Where the vertical distance between the top edge of the pavement and the adjoining berm is four inches (4") or more, the Contractor shall, at the direction of the Contract Administrator, either correct the condition by placing suitable material against the edge of the pavement or may erect and maintain temporary guide markers as hereinbefore described.

6.21.14. Whenever one-way traffic is put into effect for a distance of not to exceed two hundred

(200) feet, at least one (1) flagger shall be used during daylight hours and at least two (2) flaggers shall be used between sunset and sunrise. Whenever the length of one-way traffic exceeds two hundred (200) feet, a minimum of two (2) flaggers or traffic signals shall be used during the daylight hours. Whenever either end of a portion of a Public Road restricted to one-way traffic is not visible for an approach distance of at least five hundred (500) feet a sign or traffic signal approved by the Contract Administrator shall be placed approximately five hundred (500) feet from the end of the restricted area. The sign or traffic signal shall be properly lighted between the hours of sunset and sunrise. The Contractor shall furnish and maintain positive and quick means of communication between the flaggers or traffic signals at opposite ends of the restricted area. The Contractor shall keep the flaggers supplied with sufficient signaling equipment.

6.21.15. Equipment and materials stored on any Public Road shall at all times be marked. From the hour of sunset to sunrise, any such material or equipment stored between the side ditches or between the lines five (5) feet behind any raised curbs shall be clearly outlined with warning lights or other equally dependable devices in conformance with the MUTCD and approved by the Contract Administrator. In addition, when the restricted portion of a Public Road includes sidewalks, the Contractor shall provide any other light, barricades, etc., that may be needed for the protection of pedestrian traffic. No earth or other material shall be dumped or stockpiled on any new or existing pavement. Such material shall be kept clear of pavement areas at all times.

6.21.16. All barricades, signs, and obstructions shall be illuminated at night and all lights for this purpose shall be kept burning from sunset to sunrise. Between the hours of sunset and sunrise the Contractor shall provide and maintain two (2) red lights (one above the other) at each barricade and such other points as are necessary to protect the traveling public. When or where there occurs any direct or indirect damage or injury to public or private property, by or on account of an act, omission, neglect or misconduct or in consequence of executing the Work, such property shall be restored by the Contractor at the Contractor's expense to a condition equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring the same or the Contractor shall make good in a manner acceptable to the Contract Administrator and to the owner or owners of such property.

6.21.17. Opening of a Portion of the Work to Traffic and Acceptance of Structures. When a portion of Work is complete, that portion may be accepted and put in service when the City believes that such service will benefit the public or the City.

6.22. The Contractor shall cooperate with the Contract Administrator in protecting and preserving all cornerstones and monuments that are within the Right-of-Way of the Work or of any Public Road. The Contractor shall not start grading or other operations until the Contractor has referenced all known cornerstones, monuments and land markers in the Work area. Monuments, cornerstones and land markers unexpectedly encountered shall be protected, referenced and preserved.

6.22.1. When cornerstones, monuments and land markers are encountered in the performance of the Work and monument covers are not listed in the Contract Documents, the Contractor will furnish them. The Contractor will supervise the precise location and installation of the monument covers and will furnish all the labor, tools and other materials incidental to such installations.

6.22.2. The cost to the City for repair, re-determination of location and replacement of any cornerstone, monument or land marker within the Right-of-Way which is damaged, destroyed or made inaccessible during the progress of the Work by the Contractor in violation of these provisions is a charge deductible from any monies payable to him on account of the Work.

6.23. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the highest degree of care so as not to endanger the life or property.

6.23.1. The Contractor agrees and warrants that the Contractor will observe Federal, State and local laws and ordinances and regulations relative to the use and storing of such explosives as may be used or kept on the job and all such storage places shall be marked clearly "DANGEROUS-EXPLOSIVES".

6.23.2. The attention of the Contractor is directed to the provisions of all City ordinances relative to the use, storage and transportation of explosives. A blasting permit must be obtained from the City Engineer's office prior to any blasting.

6.24. The Contractor shall adequately and suitably box, fence or otherwise protect all trees, other woody plants and vegetation that are to remain in place; and shall repair injuries to bark, trunk, limbs and roots of remaining plants by properly dressing, cutting and painting. The Contractor shall provide for safekeeping of cattle, horses and other animals by fencing the Work site. Gates shall be locked when not in use. The Contractor shall be responsible for the loss of animals as a result of the Work.

6.25. Before doing any Work over, under or near railroad tracks, telephone, power, sewer or pipelines the Contractor shall make, at his own expense, arrangements for properly securing and protecting the utilities until the Work is completed.

6.26. All work on navigable waters shall be conducted so the free navigation of the waterways will not be interfered with and the existing navigable depths will not be impaired.

6.26.1. In cases where Work is to be done in the bed of a navigable stream the Contractor shall advise the local U.S. Corps of Engineers of the intention to do such Work and the Contractor shall conform to such practices and regulations as the Corps of Engineers may deem necessary to protect water-borne traffic.

6.27. Within 24 hours after the occurrence of any accident or other event, which results in or might result in, injury to person(s) or property, arising out of or involves any omission or act of the Contractor or any Subcontractor or any employee or agent of either in any manner from the performance of the Contract, the Contractor shall send written report of such accident or other event to the Contract Administrator and the City's Attorney, setting forth a full and precise statement of facts pertaining thereto. The Contractor shall also immediately send to the City's Attorney a copy of any summons, subpoena, notice or other document served upon or received by the Contractor or any Subcontractor or any agent, employee or representative of either, in connection with any matter before any court, arising out of the Contractor's Work or the performance of the Contract.

6.28. The Contractor shall cooperate with the owners and operators of all underground and overhead utility lines in the removal or rearrangement operations in order that their services may proceed in a reasonable manner, that duplication of rearrangement work may be reduced to a minimum and that services rendered by such owners and operators will not be unnecessarily interrupted.

6.28.1. In the event of intended or accidental interruption to utility services as a result of the Work, the Contractor shall promptly notify the proper authority. The Contractor shall cooperate with the said utility in the restoration of service as promptly as possible. In no case shall interruption to water service be allowed outside of working hours. Fire hydrants shall be accessible to the Fire Department at all times and no materials shall be kept or stockpiled within fifteen (15) feet of any fire hydrant.

6.28.2. The Contractor shall notify in writing the utility company and the municipal authorities that may be affected by any Work involving public utility facilities before commencing Work. Copies of all such notices shall be promptly filed with the Contract Administrator. The Contractor shall give notices for the removal or relocation of utilities in ample time. The Contractor shall

locate all storm sewers, culverts, buried telephone or electrical conduits, cable television sanitary sewers, water mains, and gas mains that might interfere with the construction of the project.

6.28.3. The revision and crossings of the various types of lines shall be made as follows:

6.28.3.a. Storm sewers and culverts may be removed at the time of crossing or may be adequately braced and held in position while the pipe is placed beneath them. If the storm sewer or culvert is removed, it shall be replaced with pipe of the same type and size as that removed and it shall be re-joined to the undisturbed line with a joint satisfactory to the Contract Administrator. Backfill over the main up to and around the storm sewer shall be thoroughly compacted in order that no settlement will occur.

6.28.3.b. All overhead and buried telephone and electrical conduits, cable television and gas mains to be revised or crossed by the construction of this Project shall be protected in accordance with the directions of the utility company owning the conduits and/or mains. The Contractor shall notify the companies and obtain their permission before making any crossings or revisions. Any overhead cables, buried cables, conduits or gas mains damaged by the Contractor shall be repaired at the Contractor's expense to the satisfaction of the Contract Administrator.

6.28.3.c. The Contractor shall not remove any water or sanitary sewer lines except as directed by the Contract Administrator or as required by the Plans and Specifications and shall adequately brace and protect the lines from any damage during construction. The Contractor will repair any existing water main or sewer main or lateral line damaged by the Contractor's operations. The repairs shall be inspected by the Inspector. The Contractor shall notify the City immediately after damaging any pipe. The repairs will be made at the Contractor's expense.

6.28.3.d. The location of utility service lines serving individual properties are not shown on the Plans and Specifications and it shall be the Contractor's responsibility to make any necessary changes in the line and/or grade of such services or to secure the necessary changes to be made by the particular utility company involved or the owner thereof or by an agent or independent contractor approved by such utility company or owner. Contractor shall pay the cost of all such revisions whether performed by the Contractor, the utility company or owner, or any contractor. In the event of interruption of a utility service as a result of accidental breakage, Contractor shall promptly notify the Contract Administrator and the owner of the utility and shall repair or cause the same to be repaired, in the same manner as necessary changes above provided. The Contractor shall do all things necessary to see that the restoration of service is accomplished as promptly as reasonably possible. All sanitary sewer service lines damaged shall be replaced as directed by the Contract Administrator regardless of type or kind of damage.

6.28.4. In the event the Contractor in any way fails to comply with the requirements of protecting, repairing and restoring of any utility or utility service, and the Contractor does not protect, repair, rebuild and/or otherwise restore such utility or utility service within ten (10) days of receipt of notice from the Contract Administrator, the Contract Administrator may, upon written notice, proceed to protect, repair, rebuild or otherwise restore such utility or utility service as may be deemed necessary and the cost thereof will be deducted from any money due or which may become due the Contractor pursuant to the terms of his Contract.

6.29. Necessary sanitary conveniences for the use of employees on the Work, properly secluded from public observation, shall be provided and maintained by the Contractor. The construction and location of the facility and disposal of the contents shall comply with all laws of the City and State, relating to health and sanitation regulations.

6.30. Electronic Transmission of Submittals:

6.30.1. Transmittals must be made electronically.

6.30.1.a. Contractor shall utilize PROCORE . Initial fees and subscription costs for this application shall be included in the Contractor's bid.

6.30.1.b. Protocols and processes will be determined at the Pre-Construction Conference.

6.30.2. Provide documents in Adobe Acrobat Portable Document Format (PDF), latest version.

6.30.3. Do not password Protect or lock the PDF document.

**7.0 CONTRACTOR'S OBLIGATION AND RISK**

7.1. The performance of the Contract and the Work is at the risk of the Contractor until the final acceptance and payment by the City. The Contractor shall take all responsibility of the Work and shall bear all losses that may arise out of the character of the Work, the nature of the land in or upon which the Work is done, whether or not it is due to the fact that the land is different from what is assumed or expected or on account of inclement weather, floods, fire, windstorm or other actions of the elements or any other cause or causes. The Contractor, at Contractor's expense, shall restore the same or remedy the damage caused by Contractor's performance of the Work.

7.2. Unless otherwise provided by the Plans and Specifications, all materials, supplies, machinery and equipment utilized by Contractor in the performance of the Work are warranted new unless otherwise required or permitted by the Plans and Specifications, and of good quality and all of the Work performed by Contractor shall be performed using such degree of care, skill and attention as is reasonably expected of professionals providing similar services within the State where the Work is to be performed and under similar circumstances . Contractor warrants that all machinery and equipment furnished will be free from defects in workmanship and material and will conform with the requirements of the Plans and Specifications. All warranties for the materials, supplies, machinery, equipment and Work herein shall survive acceptance and payment for the Work.

If any materials, supplies, machinery, equipment and/or Work is proven to be defective during the performance of the Work or within one (1) year from the date of Substantial Completion of the Work, Contractor shall re-perform such defective Work, repair or replace such defective materials or equipment, as Contractor deems appropriate. The foregoing warranties do not apply to the extent any materials, supplies, machinery, equipment and/or Work has been: (i) subject to abuse, misuse, neglect, or accident, (ii) subject to improper operation, maintenance, storage or repair, (iii) subject to damage caused by circumstances beyond Contractor's control, or (iv) manufactured, programmed, installed, modified, or repaired other than by Contractor, on Contractor's behalf, or with Contractor's prior written approval. If a defect is found not to be Contractor's responsibility, standard rates for repair, replacement and/or labor shall apply. With respect to materials and equipment not manufactured by Contractor, Contractor will pass on any warranties provided to Contractor by its suppliers. Notwithstanding the foregoing, the Customer acknowledges and agrees that the Contractor is the provider of services under this Agreement. The Contractor shall not be considered a merchant or vendor of goods and shall not convey to the Customer any rights of use or ownership in the ECMs. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE WARRANTIES AND REMEDIES

SET FORTH IN THIS SECTION 7.2 (CONTRACTOR'S OBLIGATION AND RISK) ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES AND REMEDIES, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

7.3. Unless otherwise expressly omitted, the Contractor shall perform all Work and furnish all supplies and materials, machinery, equipment, facilities and means, necessary or proper to perform and complete all the Work required by this Contract within the time herein specified and in accordance with the provisions of the Contract Documents. The Contractor shall observe, comply with, and be subject to all Terms and Conditions, requirements and limitations of the Contract and shall complete all of the Work contemplated by this Contract to the reasonable satisfaction of the Contract Administrator and the City.

#### 8.0 CONTRACTOR TO CHECK DRAWINGS AND SCHEDULES

8.1. The Contractor shall check all dimensions, elevations and quantities shown on the Plans and Specifications and estimates or schedules given to the Contractor by the Contract Administrator; and shall notify the Contract Administrator of any discrepancies. The Contract Administrator and Project Engineer will provide corrections, interpretations and instructions necessary to perform the intent of the Contract and the Contractor shall carry out such instructions as if originally specified.

8.2. Figured dimensions govern. Indicated dimensions, when given on the Plans and Specifications, shall be accurately followed, even though they differ from the scale measurements. If dimensions are not indicated on the Plans and Specifications, then the Contractor shall not perform the Work until such time that the Contractor has received written instructions from the Engineer regarding the dimensions to be used.

8.3. Any Work done without being properly located and established by base lines, off-set stakes, bench marks or other basic reference points, which are located, established or checked by the Engineer, may be required to be removed and replaced at the Contractor's cost or expense.

#### 9.0 DRAWINGS FURNISHED BY CONTRACTOR

9.1. The Contractor shall furnish all shop, fabrication, assembly, foundation and other Drawings required by the Plans and Specifications; Drawings of equipment and devices, offered by the Contractor for approval of the Contract Administrator, in sufficient detail to adequately show the construction and operation thereof; and Drawings depicting essential details of any changes in design or construction proposed by the Contractor in lieu of the design or arrangement required by the Contract or any item of Extra Work. The Contractor shall submit to the Contract Administrator the number of copies required by Contract Administrator of each such Drawing for the Contract Administrator's approval. After approval by the Contract Administrator, all such Drawings shall become a part of the Contract Documents and the work or equipment shown therein shall be in conformity therewith unless otherwise required by the Contract Administrator.

9.2. The Engineer's check and approval of Drawings, submitted by the Contractor, will apply to the general conformity of the Plans and Specifications and does not constitute a comprehensive approval of all of the dimensions, quantities and details of the material or equipment depicted therein; nor does such check and approval relieve the Contractor of the Contractor's responsibility for errors contained in such Drawings.

#### 10.0 PATENT RIGHTS

10.1. All fees for any patented invention, article or arrangement that is based upon, or in any manner

connected with, the construction, erection or maintenance of the Work or any part hereof embraced in this Contract and these Specifications, shall be included in the Proposal amounts in the Contract for said Work. The Contractor shall protect and hold harmless the City against any and/or all demands of such fees.

## 11.0 MODIFICATION AND ALTERATIONS

11.1. The Contractor agrees that the City has the right to make such modifications, changes and alterations as the City may see fit in any part of the line, grade, form, arrangement, dimension, extent or in the materials to be used in or of the Work contracted to be done without affecting the validity of the Contract or the liability of the Sureties upon the performance of this Contract or the Bonds.

11.2. Where any modification, change or alteration increases the quantity of Work to be performed and is within the scope of a fair interpretation thereof, such increase shall be paid for according to the quantity of Work actually done, either at unit prices included in the Contract, or in the absence of such unit, as Extra Work. Modifications and alterations, which reduce the quantity of Work to be done, shall not constitute a claim for damages for loss of anticipated profits on the Work or materials involved in such reduction.

11.3. The Contract Administrator shall determine, on an equitable basis, the amount of credit due the City for Contract Work not performed as a result of modifications or alterations authorized hereunder where the value of the omitted Work is not fixed by unit prices in the Contract. The Contract Administrator shall give an allowance to the Contractor for any actual loss incurred in connection with the purchase, delivery and subsequent disposal of materials and equipment required for use on the Work as actually built; and shall make any other adjustment of the Contract amount where the method to be used in making such adjustment is not clearly defined in the Contract Documents. In this respect, such determination must be approved in writing by the City and/or the Contract Administrator.

11.4. All orders for modifications, changes or alterations in the Work as herein provided shall be in writing, either by the Contract Administrator or by the City Manager through the direction of the City Council. Provided, however, all orders for modifications, changes or alterations in the Work, which increase the amount of money due the Contractor less than twenty-five thousand dollars (\$25,000.00) may be approved by the City Manager, increases in excess of twenty-five thousand dollars (\$25,000.00) must be approved in advance by the City Council and shall be in writing and executed by the parties in order to be binding.

## 12.0 SUSPENSION OF WORK ON NOTICE

12.1. The Contractor shall delay or suspend the progress of the Work or any part thereof, whenever the Contractor is required by written order of the City or Contract Administrator and for such periods of time as determined by the City. Any such order shall not modify or invalidate in any way the provisions of this Contract.

## 13.0 RIGHT TO TERMINATE CONTRACT

13.1. In addition to any other right set out in the Contract Documents, the City has and retains the right to terminate the Contract, upon giving written notice to the Contractor for the following:

13.1.1. If the Contractor abandons the Work by moving equipment off-site and does not man the job for a period of five (5) working days, unless the Work is suspended by written order of the City or Contract Administrator.

13.1.2. If the Contractor assigns this Contract by a method otherwise than as herein provided.

13.1.3. If the Contractor is adjudged bankrupt.

13.1.4. If a general assignment of the Contractor's assets be made for the benefit of his creditors.

13.1.5. If a receiver should be appointed for the Contractor or any of his property.

13.1.6. If at any time the Engineer shall certify in writing to the City that the Contractor is willfully violating any of the material conditions or covenants of this Contract.

13.1.7. If at any time the Engineer shall certify in writing to the City that the Contractor is executing the Work in bad faith or otherwise not in accordance with the material terms of this Contract.

13.1.8. If the Work be not substantially completed within the time named for its completion, or within the time to which such completion date may be extended, due to causes within Contractor's reasonable control.

13.2. The City may only terminate in accordance with Section 13.1 herein upon serving written notice upon the Contractor and their Surety of the City's intention to terminate this Contract. The notice will state that the Contract shall cease and terminate unless within twenty (20) working days after the notice is received, Contractor fails to cure the default or make satisfactory arrangement for the performance of the Work in accordance with the terms of the Contract.

13.3. In the event of termination, the Surety shall have the right to take over and complete the Work. The Surety must commence performance of the Contract or make a satisfactory arrangement for the continuance of the Contract within sixty (60) working days from the date of notice of termination.

13.4. If the Surety does not perform the Contract or make satisfactory arrangements for the completion of the Work within sixty (60) working days from the date of the notice of termination, the City may take over the Work and prosecute it to completion. The City may complete the Contract with a new Contractor or with its own work force. The Contractor and the Contractor's Surety shall be liable to the City for any and all excess costs sustained by the City by reason of such prosecution and completion of the Work.

13.5. In the event of termination of the Contract, the City may take possession of and utilize in completing the Work all such materials, equipment and tools as may be on site of the Work. If the City chooses not to use the materials and equipment left on site, it will notify the Contractor and the Contractor will have ten (10) working days to remove said items from the Work site. After the ten (10) working day period the remaining materials and equipment will be considered abandoned by the Contractor and will be disposed of by the City, and the Contractor will have no claim against the City for said disposal of abandoned items.

13.6. Contractor's Rights: Contractor may terminate the Contract or suspend the performance of Work, by providing written notice to the City if: (i) the City repeatedly or materially fails, refuses or neglects to fulfill its obligations under the Contract or fails to make any payment(s) to Contractor as and when due hereunder, (ii) Contractor has provided written notice of default to the City detailing the alleged failure, refusal, neglect, or payment default, and (iii) within thirty (30) days of the City's receipt of such written Notice, the City has neither cured nor commenced and diligently continued efforts to cure such default.

#### 14.0 CONTRACTORS' RIGHT OF PROTEST

14.1. If the Contractor considers any work demanded to be outside the requirements of the Contract or considers any record or ruling of the Contract Administrator to be unfair, the Contractor shall immediately request the Contract Administrator provide written instructions or decisions, whereupon the

Contractor shall proceed, without delay, to perform the Work in conformance with the instructions or decisions. Within ten (10) working days after the date of receipt of the written instructions or decisions, the Contractor shall file a written protest with the Contract Administrator, stating clearly and in detail the basis of the objections. Except for such protest and objections made of record in the manner herein specified and within the time stated, the instructions or decisions of the Contract Administrator shall be final and conclusive. Contractor may also protest and claim against the instructions and decisions of the Contract Administrator between the Plans and Specifications, and the conditions on the ground, or any errors or omissions in the Plans and Specifications, estimates, or layout as given by stakes, points or instructions, which may be discovered in the course of the Work. The Contractor may not take advantage of any errors or omissions in the Plans and Specifications, as full instructions contained in letters transmitting Plans and Specifications to the Contractor shall be considered as written instructions or decisions. In the event the Contractor suffers actual damages as a result of the written instruction or decisions under protest for which the Contractor seeks to hold the City liable, Contractor must submit a written itemized statement of costs within thirty (30) days of the discovery of the claimed loss and allow the City access to all Contractors' records to audit the claim. Failure of Contractor to timely file the statement or to allow the audit waives any recovery for damages.

## 15.0     EXTRA WORK

15.1. If the Contractor does any work or furnish any materials, which are not classified under any of the terms of this Contract and are necessary in order to complete the Work under this Contract and such Work is ordered, in writing, by the Contract Administrator, the Work or materials shall be considered Extra Work. All Extra Work and any costs related thereto shall be approved by the City Council and agreed to by commencing the Extra Work.

15.2. If a modification or amendment to this Contract increases the amount of Work and the Extra Work or any part thereof is of a type and character that can properly and fairly be classified under one, or more unit price items of the Proposal, then the Extra Work shall be paid according to the amount of Extra Work actually performed and at the applicable unit price. Otherwise, such Extra Work shall be paid for as hereinafter provided.

15.3. Claims for Extra Work will not be paid unless the City authorized the Extra Work in writing. The Contractor shall not have the right to prosecute or take action in court to recover for Extra Work unless the claim is based upon a written Change Order from the City. Payments for Extra Work will be based on an agreed lump sum or on agreed unit prices whenever the City and the Contractor agree upon such prices before the Extra Work is commenced; otherwise, payment shall be a specified percentage allowance as set forth herein.

15.4. For the purpose of determining whether Extra Work proposed will be authorized or for determining the payment method for Extra Work, the Contractor shall submit to the Contract Administrator a detailed cost estimate for proposed Extra Work. The estimate shall show itemized quantities and charges for all elements of direct cost. Charges for the Contractor's extra profit, extra general superintendence, extra field office expenses, bonds and extra overheads shall not be paid except as a percentage addition to the total estimated net cost. Unless otherwise agreed to by the parties, such percentage additions shall be twenty percent (20%) of the direct costs for the Extra Work performed by the Contractor's own work forces or twenty percent (20%) of the direct costs for Extra Work performed by a Subcontractor.

15.5. The payment for Extra Work will be paid as full compensation for the Contractor's and Subcontractor's extra profit, extra general superintendence, extra field office expense, extra overheads and all other elements of extra cost not defined herein as actual field cost.

15.5.1. The actual field cost shall include those extra costs for labor and materials expended in direct performance of the Extra Work and may include:

15.5.1.a. The actual payroll cost of all workmen, such as laborers, mechanics, craftsmen, and foremen.

15.5.1.b. The Contractor's or Subcontractor's net cost for materials and supplies.

15.5.1.c. Contractor owned equipment, which the Contractor has on the job site and which is of a type and size suitable for use in performing the Extra Work shall be used. The hourly rental charges for equipment shall not exceed one-half of one percent (1/2 of 1%) over the latest applicable Associated Equipment Distributors published rental rates.

15.5.1.d. The actual net rental charge for vehicles and construction equipment not owned by the Contractor or Subcontractor and are not available from the equipment of Contractor or Subcontractor.

15.5.1.e. The transportation charges for rented equipment.

15.5.1.f. The charges for extra power, fuel, lubricants, water and special services.

15.5.1.g. The charges for extra payroll taxes, bond premiums and insurance premiums.

15.5.2. The form in which actual field cost records are kept, the construction methods and the type and quantity of equipment used shall be acceptable to the Contract Administrator and shall distinguish Extra Work and work under protest from all other work.

15.6. The Contractor shall file with the Contract Administrator, certified lists in duplicate, of any equipment and the schedule of pay rates for common and semi-skilled labor and operators of various classes, which are intended to be used in performing the Work covered by this Contract. These rates shall be subject to the approval of the Contract Administrator. This information will be used by the Contract Administrator for computation of Extra Work as mentioned above, however, if the Contractor fails to file these lists with the Contract Administrator prior to starting any Work covered by Contract, then the Contract Administrator's computation shall be based on the prevailing hourly rate of wages in the locality for each craft or type of workmen needed to execute the Contract as ascertained by the Oklahoma Labor Commissioner.

## 16.0 SUPERVISION AND INSPECTION

16.1. The City shall appoint or employ such Contract Administrator(s), Engineer(s) or Inspector(s) as the City may deem proper, to examine and observe the materials furnished and the Work performed, and to see that the said materials are furnished, and that the Work is performed, in accordance with the Plans and Specifications therefore. The Contractor shall furnish all reasonable aid and assistance required by the Contract Administrator, Engineer or Inspector, for the proper examination and observation of the Work and all parts thereof.

16.1.1. Such inspections are for the benefit of the City and shall not relieve the Contractor from any obligation to perform the Work strictly in accordance with the Contract Documents. Any work not constructed in accordance with the Contract Documents shall be removed and made good by the Contractor at his own expense, whenever so ordered by the Contract Administrator.

## 17.0 CONTROL OF MATERIALS

17.1 Export Control. The Materials provided by Contractor under this Contract may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. The City acknowledges and agrees that the supply, assignment and/or usage of Materials under

this Contract must fully comply with applicable US, EU and/ or other national or international export control laws and regulations ("Export Laws"). Unless applicable export licenses have been obtained from the relevant authority and Contractor has approved, the Materials shall not (i) be exported and/or re-exported to any destination or party restricted by applicable Export Laws; or (ii) be used for those purposes or fields restricted by any Export Laws. The City also agrees that the Materials will not be used either directly or indirectly in any rocket systems, unmanned air vehicles, nuclear weapons delivery systems, and/or in any design, development, production or use of or related to weapons (which may include, without limitation, chemical, biological or nuclear weapons). Contractor shall be excused from performing any obligations under this Contract that would, in Contractor's judgment, violate any Export Laws or expose Contractor to a risk of liability thereunder.

## 18.0    LEGAL DUTIES AND RESPONSIBILITIES TO THE PUBLIC

18.1. The Contractor warrants that the Contractor is familiar with and shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and any orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Contract, including, without limitation, Workman's Compensation laws, minimum and maximum salary and wage statutes and regulations if applicable, laws with respect to permits and licenses and fees in connection therewith, laws regarding maximum working hours and laws and regulations with respect to the use of explosives.

Contractor certifies that the Project, when completed will comply, with the applicable provisions of the Department of Justice implementation plan of Title III of the Americans with Disabilities Act, Title 42 USCA § 12101-12213, as outlined in 28 CFR Part 35; and Contractor further stipulates and agrees to comply with Title VI of the Civil Rights Act of 1964, Title 78 OS § 252.42, USCA § 2000d, *et. seq.*; and if the Work contemplated by this Contract qualifies as a federally assisted program of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, then Contractor agrees to comply with all requirements imposed by or pursuant to Title 49 CFR Part 21.

18.2. Whenever required, the Contractor shall furnish the City Attorney or the Contract Administrator with satisfactory proof of compliance with said laws, statutes, etc.

18.3. In the hiring of employees for the performance of Work under the Contract the Contractor and any Subcontractor thereunder shall not, by reason of race, color, sex, age, disability, or national origin, discriminate against any citizen of the United States in the employment of laborers or workers, who are qualified and available to perform the Work to which the employment relates.

18.3.1. No Contractor or Subcontractor, nor any person on behalf of either, shall in any manner discriminate against or intimidate any employee hired for the performance of Work under this Contract, on account of race, color, sex, age, disability or national origin.

18.4. The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices, necessary and incident to the due and lawful prosecution of the Work.

18.5. Without exception, the Bid amounts include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. It is the intent hereof that whenever the Contractor is required or desires to use any design, device, material or process covered by letters patent, trademark or copyright, the Contractor shall provide for the right to such use by suitable agreement with the patentee, owner or assignee and a copy of such agreement shall be filed with the City; however, whether or not such agreement is made or filed as herein provided, the Contractor in all cases shall indemnify and save harmless the City and any affected railroad or railway company or political subdivision from any and all claims for Contractor's infringement at any time after the award of the Contract. Notwithstanding anything to the contrary contained herein, Contractor shall not be liable hereunder if the infringement results from the City's or a third party's alteration or modification of, and/or the use of the patented or copyrighted design, devise, material or process in a manner which is not permitted or anticipated and outside of its scope. In the event of infringement, the City must (i) promptly notify Contractor of any

such claims, (ii) provide cooperation, and (iii) give Contractor the sole right to control the defense and settlement.

#### 19.0 CONTRACTOR IS INDEPENDENT CONTRACTOR

19.1. It is expressly agreed that the Contractor is an independent Contractor and is not in any way whatsoever an agent, servant or employee of the City and the City shall in no way or under any circumstance be liable for any acts or omissions, contracts, subcontracts or torts of said Contractor.

#### 20.0 CONTRACTOR'S EMPLOYEES

20.1. The Contractor shall employ competent foremen, experienced mechanics and others skilled in the several parts of the Work given them to do, for performance of the Work contemplated by this Contract; and shall promptly discharge any and all incompetent or otherwise unsatisfactory employees.

20.2. The Contractor agrees that the Contractor (and Contractor's Subcontractors, if any) will not fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employees due to consideration of race, color, sex, age, or national origin, and further agrees that it will not (nor will their Subcontractors, if any) limit, segregate or classify Contractor's employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect Contractor's employee's status as an employee, because of such individual's race, color, sex, age, or national origin. Contractor agrees not to discriminate on the basis of disability if the prospective employee is otherwise qualified to perform the duties of the job. Contractor further agrees that this Contract may be terminated by the City in the event there shall be a violation of any of the provisions of this Section, upon notice in writing, and all claims for monies to become due pursuant to any other provisions of this Contract from the date of termination shall thereafter be forfeited, the Contractor being entitled only to monies expended and services performed and up to and including the date of termination.

20.3. All workmen must have sufficient skill and experience to properly perform the Work in a proper and skillful manner. If any workman is disrespectful, disorderly or otherwise objectionable then that workman shall be discharged by the Contractor or Subcontractor employing such workman, upon written request of the Contract Administrator and shall not thereafter be employed on any portion of the Work without the written consent of the Contract Administrator. Should the Contractor fail to remove such workman the Contract Administrator may withhold all estimates, which are or may become due, or may suspend the Work for each day the Contractor fails to comply with this Section.

20.4. The Contractor shall not subcontract any portion of the Contract or Work without the written consent of the Contract Administrator, such consent to not be unreasonably withheld, and the granting of any such consent shall not relieve the Contractor of any responsibility under the Contract. The Contractor shall be responsible for the satisfactory settlement by any and all of its Subcontractors of all claims and obligations arising in connection with the execution of their respective portions of the Contract and for furnishing to the City, to its satisfaction, evidence thereof.

#### 21.0 ASSIGNMENT AND SUBLetting OF CONTRACT

21.1. The Contractor shall give attention to the fulfillment of this Contract, and shall not let, assign or transfer the Contract or any other rights, titles or interests in or to the same or any part thereof, by attorney or otherwise, or sublet any part of the Work to any other person without the prior consent of the City in writing, such consent to not be unreasonably withheld.

21.2. If in the City's reasonable opinion, any Subcontractor fails to perform the Work undertaken by the Subcontractor in a safe manner, then, upon the written notice the City, the subcontract shall be immediately terminated by the Contractor. The Contractor shall be fully responsible to the City for the

performance of Work by any Subcontractor, as the Contractor is for the acts and/or omissions of persons directly employed by the Contractor. Nothing contained in the Contract Documents shall create any contractual relationships between any Subcontractor and the City.

## 22.0. INDEMNIFICATION AND DEFENSE OF SUITS

Contractor shall indemnify and hold harmless and defend the City from any and all claims made or actions at law or in equity brought by third parties against the City or any of its officers, agents or employees for any bodily injury(ies) or property damage(s) caused by the negligence or willful act of the Contractor or its Subcontractors or their agents, provided that the City (i) gives Contractor prompt written notice of any such claim, and (ii) provides such cooperation and information as Contractor may reasonably require in the defense or handling of any such claim. Contractor shall not be responsible for any settlement or consent to judgment made by or on behalf of the City without Contractor's prior written consent.

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## 23.0 WORKER'S COMPENSATION, EMPLOYER'S LIABILITY INSURANCE, OWNER'S RISK AND LIABILITY INSURANCE AND PROPERTY INSURANCE REQUIREMENTS

23.1. The Contractor and their Subcontractors shall obtain and maintain, during the life of this Contract, Workmen's Compensation Insurance as prescribed by laws of the State of Oklahoma and Employer's Liability Insurance.

23.2. Contractor's liability insurance policies shall inure to the benefit of the Contractor as the named insured and shall contain an agreement by the insurer to indemnify the Contractor against any and all actions, claims, judgments or demands for damages arising on account of injuries of whatsoever kind and character sustained by a person or persons on account of the construction of this Work or performance of the Contract by the Contractor.

23.3. Where applicable, the Commercial General Liability Insurance property damage liability shall be endorsed for blasting, the collapse of or structural injury to any building or structure, and damage to underground property, such as wires, conduit pipes, main sewers or other similar property.

23.4. The Contractor shall furnish Commercial General liability insurance and Automobile Liability insurance under which the City and the Engineers will be included as an additional insured, but only with respect to liability caused in whole or in part by operations of Contractor on behalf of the City where required by written contract.. The limits of this coverage shall be as set out in this Contract.

23.5. The Contractor shall obtain and maintain Builders Risk Insurance upon the contract site where the Work of this Contractor is to be completed on the completed value form, for one hundred percent (100%) of the contract value. Such insurance shall cover both the contract site and the Contractor as their interests appear for physical loss or damage to property, as well as third party liability related to work conducted on the contract site, during storage, transportation within the limit of the contract site, erection, testing of any kind and commissioning, and terminating at the end of the construction period or warranty/defect liability period.

23.7. Contractor shall provide to the City Certificates of insurance and shall be filed through the Engineer prior to commencing the Work. The Contractor shall submit the Certificates in duplicate, one original Certificate and one copy of proof of insurance requirements set forth above. The Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days written notice has been given by the Contractor to the City. Partial occupancy of the project by the owner shall not affect insurance coverage.

## 24.0 MINIMUM INSURANCE AMOUNTS

24.1. Commercial General Liability Insurance minimum coverage limits shall be no less than \$5,000,000 per occurrence and \$5,000,000 general aggregate limits to cover third party liability for bodily injury and property damage.

24.2 Automobile Liability Insurance: Automobiles and Truck; Owned, Leased, Hired and Non-owned minimum coverage limits shall be no less than:

Personal Injury, per person	\$ 100,000.00
Personal Injury, per accident	1,000,000.00
Property Damage, per person	100,000.00
Property Damage, per accident	1,000,000.00

24.2. Employers Liability Insurance minimum coverage limits shall be no less than:

Employers Liability, per accident	\$1,000,000.00
Bodily Injury, per accident	1,000,000.00
Property Damage, per claimant	100,000.00

24.3. Railroad Insurance minimum coverage limits shall be no less than:  
(Railroad only required when working within the railroad Right-of-Way)

General Liability per accident	2,000,000.00
General Aggregate Limit	4,000,000.00
Automobile Public Liability Insurance, per accident	2,000,000.00

## 25.0 METHOD AND BASIS OF PAYMENT FOR ITEMS OF WORK

25.1. The Contractor shall be paid for all Work performed under this Contract based on the Contract Administrator's computations of as-built quantities and the Contractor's unit price or lump sum Bid per item. This payment shall be full compensation for: furnishing all supplies, materials, tools, equipment, transportation, labor and services required to do the Work; all loss or damage, because of the nature of the Work, from the action of the elements or from any unforeseen obstruction or difficulty which may be encountered in the performance of the Work and is not specifically provided; all expenses incurred by or because of any suspension or discontinuance of all or any part of the Work; and faithfully completing the Work according to the Contract Documents and the requirements of the Contract Administrator.

25.2. The Contractor, in case of unit-price items, will be paid for the actual amount of Work performed in accordance with the Plans and Specifications as shown by the final measurements.

25.2.1. All Work completed under the Contract will be measured by the Contract Administrator according to United States Standard Measurements. All longitudinal measurements for area will be made along the actual surface of the roadway and not horizontally and no deductions will be made for individual fixtures in the roadway having an area of nine (9) square feet or less. For all transverse measurements for area of base courses and pavements, the dimensions to be used in calculating the pay area shall be the neat dimensions shown on the Plans and Specifications or ordered in writing by the City. All materials, which are specified for measurement by the cubic yard "loose measurement" or "measured in the vehicle", shall be hauled in vehicles approved by the Contract Administrator and measured therein at the point of delivery on the road, unless otherwise provided in the Plans and Specifications. Approved vehicles for this purpose may be of any type or size satisfactory to the Contract Administrator provided that the body of such type that the actual contents may be readily and accurately determined. All approved vehicles must bear a plainly legible identification mark indicating the specified approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

25.3. The Contractor, in case of lump sum contracts or lump sum items in a unit price contract, will be paid for the actual amount of Work performed in accordance with the Plans and Specifications as shown by the final measurements.

25.3.1. All Work completed under lump sum items in the Contract will be determined by the Contract Administrator. Major items of work in a lump sum contract and the cost therefore will be identified at the beginning of the Work. Pay estimates will then be computed based on the portion of each item completed, as determined by the Contract Administrator. The sum of all Work completed on all items of work will constitute the basis of payment.

25.4. The City shall pay the Contractor for Extra Work in the following manner:

25.4.1. An amount to the sum of: (1) the Contractors (or Subcontractors) Direct Cost (as defined

below) in performing such Extra Work and (20%) twenty percent (20%) thereof for all Extra Work performed pursuant to the Terms and Conditions of this Contract. Provided that payment can be authorized only to the extent authorized by law.

25.4.2. Direct Costs means and includes: (1) all payments for wages and other labor costs incurred in performing the Extra Work; (2) the cost of all materials used or consumed in performing the Extra Work and including any sales, use, or excise taxes required by law to be paid with respect to such materials being delivered to the site of the Work; (3) all taxes and insurance and bond premiums paid as a percentage of the aforesaid wages; and (4) allowances for the use of equipment in the performance of the Extra Work, at the rates set forth in the latest edition, published prior to the opening of Bids for this Contract of the Compilation of Rental Rates for Construction Equipment, prepared by the Associated Equipment Distributors. When any piece of equipment is used on any Extra Work job for three (3) days or less, the daily rates set forth in the Compilation of Rental Rates for Construction Equipment shall apply; when used for more than three (3) days and less than twenty-two (22) days, the weekly rates shall apply and when used more than twenty-one (21) days, the monthly rates shall apply. When a weekly rate is applied to a period of over seven (7) days, the rate for the excess days shall be one-seventh of the weekly rate. When a monthly rate is applied to a period of over thirty (30) days, the rate for the excess days shall be one-thirtieth (1/30) of the monthly rate.

25.4.3. At the end of each week, the Contractor and Contract Administrator shall check and verify records of payrolls for labor furnished for Extra Work for that week. Each invoice for Extra Work shall be in form satisfactory to the Contract Administrator and shall be submitted to the Contract Administrator by the Contractor in quadruplicate. Attached to each invoice shall be the original received bills and invoices covering the costs of all materials, including freight and haulage charges, which are used or consumed in performing the Extra Work. An invoice for each Extra Work job shall be submitted not later than the 20th day of each month following any of the Extra Work that was actually performed. The City shall retain ten percent (10%) of all Extra-Work payments until the final completion and acceptance of the Work.

## 26.0 ADMINISTRATIVE COSTS AND FEES

26.1. In the event the improvements are to be paid for in cash the costs and fees for publication, engineering, filing, recording, abstracting, acquisition of easements, and City water (where available) for flushing and pipe testing shall be paid by the City unless otherwise provided for in the Contract Documents.

## 27.0 CONTRACT PRICE AND PAYMENTS

27.1. The total of all implementation contract payments shall be **\$917,194.00** (the “Contract Price”). Contractor shall invoice Customer for construction progress payments, as described herein, which shall be paid to Contractor monthly based on the percentage completion of items delineated on a “Schedule of Values” completed during the prior month. The Schedule of Values will be developed by Contractor and provided to Customer at the beginning of project implementation. The Schedule of Values will be based upon the project cost less the Project Mobilization Payment.

27.2. Within ten (10) days of the Date of Commencement, Customer shall make payment to ESCO of 10% of the total Contract Price (“Project Mobilization Fee”) for expenses relating to procurement of equipment, materials, and/or bonds, and any other project start-up and mobilization expenses.

27.3. For the initial one (1) year beginning at the Savings Guarantee Commencement Date, Customer shall receive the services as described in the Performance Assurance Support Services Agreement at no additional cost. Thereafter, the Performance Assurance Support Services Agreement shall automatically renew for a period of one (1) year, whereby Customer can maintain the current service, upgrade the level of service, or terminate, as provided for in Schedule B.

27.4. If the Work is progressing in a satisfactory manner on or about the first day of each month, the Engineer will prepare an estimate for a partial payment of the Work completed after receiving a written request from the Contractor by the first day of the month. An estimate for partial payment shall include items actually incorporated in the Work and may include materials acceptable to the Engineer that are delivered to the Work site, provided the Engineer is furnished duplicate copies of actual manufacturer's invoices of material to be included in the estimate. The estimate shall be submitted to the Director of Engineering and Construction who shall either authorize payment or notify the Contractor in writing of the reason all or a portion of payment has been delayed or denied; this payment or notice shall be mailed no later than one month following receipt of the estimate. Authorized payments shall be made to Contractor within thirty (30) days of authorization.

27.4.1. Partial payments will be made to the Contractor in accordance with the following schedule:

27.4.1.a. In the amount of 95 percent (95%) of the value of the Work completed.

27.4.1.b. If the Contractor has performed satisfactorily and the Work is substantially complete (operational or beneficial occupancy) the withheld amount may be reduced to only that amount necessary to assure completion.

27.1.1. c. In addition to the conditions set forth in a and b above, payments will always be less any sums that may be retained or deducted by the City under the terms of any of the Contract Documents and less any sums that may be retained to cover monetary guarantees for equipment, materials or process performance.

27.1.2. The Contractor may withdraw any part, or the whole, of the amount which has been retained from partial payment to the Contractor pursuant to the terms of Contract, upon depositing with or delivery to the Director of Engineering and Construction one of the following:

27.1.2.a. United States Treasury Bonds, United States Treasury Notes, United States Treasury Bills in an amount equal to the amount of the retainage withdrawn, or

27.1.2.b. General Obligation Bonds of the State of Oklahoma in an amount equal to the amount of the retainage withdrawn, or

27.1.2.c. Certificates of Deposit in an amount equal to the amount withdrawn from the retainage from a state or national bank having its principal office in the State of Oklahoma. No retained amount shall be withdrawn, which would represent an amount in excess of the market value of the securities at the time of deposit or of the per value of such securities, whichever is lower.

27.1.3. All materials and Work included in partial payments shall become the property of the City and materials included in a partial payment shall not be removed from the Work site. However, this provision shall not be construed as relieving the Contractor of responsibility for the care and protection of the materials and Work for which payments have been made; or does it relieve the Contractor from being required to restore any damaged Work, or materials removed from the Work site by unknown parties and it is not a waiver of any of the Terms and Conditions of the Contract.

27.5. Final payment will be made within thirty (30) days of when the Work has been completed. The Contract Administrator shall carefully measure and determine the as-built quantities of each class of Work as shown on the schedule of Bid items and such Extra Work performed by order of the Engineer. The aggregate cost of the Work done and the materials furnished shall constitute the amount due for the completed Work. All prior estimates and payments shall be subject to correction in the final estimate and payment.

## 28.0 RELEASE OF LIABILITY AND ACCEPTANCE

28.1. The acceptance of the final payment by the Contractor shall operate as and shall be a release to the City, its officers, agents and employees thereof, from all previously unasserted claims and/or liability from the Contractor for anything done or furnished by the City relating to or affecting the Work or for any act or negligence by the City, its officers, agents and employees relating to or affecting the Work. No person, firm or corporation other than the Contractor as a party to this Contract will have any interest hereunder, and no claim shall be made or be valid and neither the City, its officers, agents nor employees shall be liable or be held to pay any additional money. The making of final payment shall constitute a waiver of claims by the City except those arising from: (a) unsettled liens, security interests, or encumbrances arising out of the Contract; (b) the failure of the Work to comply with the requirements of the Contract; or (c) the terms and conditions of warranties expressly provided in the Contract.

28.2. It shall be the duty of the Contract Administrator to determine when the Work is complete and the Contract fully performed and to recommend its acceptance by the City. The Work herein specified to be performed shall not be considered finally accepted until all the Work has been accepted by the City, such acceptance not to be unreasonably withheld.

## 29.0 PAYMENT OR ACCEPTANCE NOT A WAIVER BY CITY

29.1. Neither acceptance by the City, the Contract Administrator or any employee of either, nor any order by the City for the payment of money or the actual payment thereof, nor any taking of possession by the City, nor the granting of any extension of time, shall operate as a waiver of any rights or powers, whether by Contract or by laws, of the City. In the event that after the Work has been accepted and final payment made, it is discovered within one (1) year from the date of the Substantial Completion that any part of this Contract has not been fully performed or has been done in a faulty or improper manner, the Contractor shall immediately remedy such defect per the terms of Section 7.2 hereof. In the event that the Contractor neglects to remedy any such defect within a reasonable time after written notice thereof, the Contractor shall be liable for and shall pay to the City the costs of remedying such defect, or a sum equal to the damage caused thereby, or both, as the City may elect. The acceptance of the Work or final payment therefore shall be no bar to claim or suit against the Contractor or Surety, or both.

29.2. Upon the satisfactory completion of all Work required under the Contract, the Contract Administrator shall certify to the City, in writing, the total amount of Work performed and compensation earned by the Contractor. No unauthorized Work shall be included or paid for. Within thirty (30) days, upon receipt of said certification, the City shall make full payment to the Contractor, less the total of all partial payments in accordance with the Terms and Conditions for final payment. Provided, however, that before making final payment of the full amount earned by the Contractor, the City may require the Contractor to furnish satisfactory evidence that the Contractor and his Subcontractors have paid all of their payrolls, bills, expenses and costs of every type and nature whatsoever connected with the performance of the Contract. The acceptance by the Contractor of final payment shall operate as a release to the City from previously unasserted claims and liabilities of every type and nature owing to the Contractor in connection with the performance of the Contract. The date of the Contract Administrator's approval by will be the date of acceptance of the Work.

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## 30.0 CONTRACTOR'S OBLIGATION AFTER ACCEPTANCE

30.1. Contractor agrees, without cost other than is specially provided for in this Contract, that at any and all times during one (1) year next following the completion and final acceptance of the Work performed under this Contract and without notice from the City, to refill all trenches or ditches that may sink or settle, to repair all breaks or failures that may occur in the Work due to defective material or workmanship.

## 31.0 CONTRACTOR'S WARRANTIES AND GUARANTIES

31.1. The Contractor warrants and guarantees that all materials used in the Work will conform to the Plans and Specifications and that all Work will be performed using such degree of care, skill and attention as is reasonably expected of professionals providing similar services within the State under similar circumstances and in accordance with the Contract.

## 32.0 LAWS AND ORDINANCES

32.1 This Contract shall be construed under the laws of the State of Oklahoma and jurisdiction shall be in the County where the Work is performed and the Work site property is located.

32.2. The Contractor is obligated to keep fully informed of all existing and current regulations of the City, County, State and Federal laws, which in any way limit or control the actions or operations of those engaged upon the Work or affecting the materials supplied to or by it. The Contractor shall at all times observe and comply with all applicable ordinances, laws and regulations; and shall protect and indemnify the City, its officers, agents and employees against any claims or liability arising from or based on any violation of the same. All such applicable laws and ordinances are a part of this Contract as though fully set forth herein.

## 33.0 IMMIGRATION COMPLIANCE

33.1 Contractor shall demonstrate that he:

- 33.1.1 Has complied, and shall at all times during the term of this Contract, comply in all respects with all immigration-related laws, statutes, ordinances and regulations including without limitation, the Immigration and Nationality Act, as amended, the Immigration Reform and Control Act of 1986, as amended, and the Oklahoma Taxpayer and Citizen Protection Act of 2007 (Oklahoma HB 1804) and any successor laws, ordinances or regulations (collectively, the "Immigration Laws"); and
- 33.1.2 Has properly maintained, and shall at all times during the term of this Contract, maintain any and all employee records required by the U.S. Department of Homeland Security ("DHS"), including, without limitation, properly completed and maintained Form I-9s for each of the Contractor's employees; and
- 33.1.3 Has verified the employment eligibility for all employees hired on or after July 1, 2008 through DHS's E-Verify system, and shall at all times continue to verify the employment eligibility of all employees hired during the term of this Contract; and
- 33.1.4 Has required, and will at all times during the term of this Contract, require any subcontractor utilized, hired or sub-contracted for by Contractor for the completion or undertaking of any duties, tasks or responsibilities under this Contract, to comply the requirements and obligations imposed by the Immigration Laws and set forth in Paragraph (I), parts (a), (b) and (c), above, with regards to each of the sub-contractor's employees.

33.2. Contractor will indemnify, defend and hold harmless City against any loss, cost, liability, expense

(including, without limitation, costs and expenses of litigation and reasonable attorney's fees) demands, claims, actions, causes of action, liabilities, suits, damages, including special and consequential damages that arise from or in connection with, directly or indirectly, Contractor's failure, deliberate or negligent, to fulfill its obligations and representations regarding verifying the employment eligibility of its employees and the employees of any subcontractor utilized by Contractor as set forth more fully in Paragraph 33.1 above.

#### 34.0 LIMITATIONS OF LIABILITY.

34.1 In no event shall either party or its officers, directors, affiliates, or employees be liable for any form of indirect, special, consequential, or punitive damages, whether such damages arise in contract or tort, and irrespective of fault, negligence or strict liability or whether such party has been advised in advance of the possibility of such damages.

34.2 The remedies of the City set forth in the Contract are exclusive unless stated otherwise and Contractor's total liability with respect to damages arising out of this Contract shall not exceed the Project Price. However, the foregoing sentence shall not limit Contractor's liability with respect to (i) damages caused by Contractor's gross negligence or intentional misconduct, (ii) third-party claims for personal injury or tangible property damage to the extent caused by Contractor's negligence or misconduct, or (iii) any other claims or damages for which Contractor's liability cannot be limited pursuant to applicable law.

34.3 The provisions of this Section 34 apply only to the extent permitted by the Constitution and laws of the State and shall supersede any contrary provisions of the Contract.

#### 35.0 NOTICES

35.1 Any notices or other communications hereunder may be given to Contractor at the address given in their Proposal, to the Surety at the office of the Attorney-in-Fact signing the Contract or at Surety's home office address on file with the Insurance Commissioner of the State of Oklahoma and to the City in care of the Contract Administrator or at such place as may be otherwise designated in writing. The personal delivery at such address, or depositing in any United States mail box regularly maintained by the Post Office, of any notice, letter or other communication to the Contractor or the City, shall be deemed sufficient service thereof, and the date of said service shall be the date of such personal delivery or mailing.

35.2 Any address may be changed at any time by an instrument in writing, executed by the Contractor or the Surety and delivered to the Contract Administrator. Nothing herein contained shall be deemed to preclude or tender inoperative the service of any notice, letter or communication upon the Contractor personally.

#### 36.0 SECTIONS AND PARAGRAPH CAPTIONS

36.1. The Section and paragraph captions and headings are not a part of the Contract Documents. They are included for convenience only and are not to be considered in the interpretation of the Contract Documents. Said captions and headings are mere labels, intended as aids in locating and reading the various portions of the Contract Documents.

#### 37.0 CONTRACT BINDING ON THE PARTIES

37.1. Except as otherwise expressly limited herein, this Contract shall be binding upon the parties and their respective heirs, representatives, successors or assigns.

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IN WITNESS WHEREOF, the City Manager of the City of Broken Arrow, Oklahoma has hereunto set his hand, for and on behalf of the City of Broken Arrow and the Contractor has signed, or caused his name to be signed, and seal affixed by proper authority, the day and year first above written and these presents have been executed in triplicate counterparts.

**OWNER:**

City of Broken Arrow, a Municipal Corporation

Approved as to form:

By \_\_\_\_\_  
Assistant City Attorney

By \_\_\_\_\_  
Michael L. Spurgeon, City Manager

Date \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Date \_\_\_\_\_

**CONTRACTOR NAME:**

Schneider Electric  
(Printed company name)

By Darrel DeMoss

Darrel DeMoss Director of Operations  
(Printed name and title)

Date 3/1/2024

(CORPORATE SEAL) if applicable

Attest Josh Kfarmer

Josh Kfarmer Program Manager  
(Printed name and title)

Date 3/1/24

**VERIFICATION**

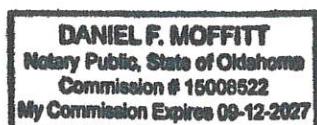
State of OK )  
                  ) §  
County of Tulsa )

Before me, a Notary Public, on this 1<sup>st</sup> day of March, 2024, personally appeared Darrel DeMoss, known to be to be the (President, Vice-President, Corporate Officer, Member, Partner, or Other: Director of Operations of Schneider Electric (Company name), and to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:

9/12/2027

Daniel F. Moffitt  
Notary Public



**DIVISION I**  
**CONTROL OF EQUIPMENT**

(General): All equipment necessary for completion of the Work contemplated under this Contract shall be in first-class operating condition and shall have been inspected and approved by the Contract Administrator before construction where the equipment is used will be permitted to begin. Thereafter, the equipment shall be maintained in first-class operating condition throughout its use for the Work under this Contract.

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**DIVISION II**  
**CONSTRUCTION SPECIFICATIONS**

All Work shall be accomplished in accordance with ODOT, EPA, and ODEQ regulations, AWWA Standards and Plans and Specifications created by the Engineer.

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**DIVISION III**  
**MATERIAL SPECIFICATIONS**

All materials shall be in accordance with materials as specified in the Investment Grade Audit Report and Engineering Documents.

[The remainder of this page intentionally left blank]

## DIVISION IV SPECIAL PROVISIONS

SP 1.0 PURPOSE: It is the intent that a contract will be executed by the City of Broken Arrow, Oklahoma (hereinafter referred to as the "CITY") and by the successful bidder (hereinafter referred to as "CONTRACTOR") for labor, materials, and equipment to complete the said project that is a public facility of the CITY. This contract will include, by reference and incorporation, the contract bid proposal, instructions to bidders, specifications, and all other documents contained in the bid packet. All actions, duties, and obligations required by the CONTRACTOR apply only to the CONTRACTOR's agents and employees. All legal protections offered to the City of Broken Arrow shall also be extended to any CITY entity involved with this contract.

SP 2.0 FIELD OFFICE: This is not required on this project.

SP 3.0 PHOTOGRAPHS: They are required on this project.

### SP 4.0 STANDARD SPECIFICATIONS:

- 4.1 Specifications required in the Plans & Specifications provided by the Engineer as part of the Contract Documents.
- 4.2 The Oklahoma Department of Transportation (ODOT) Standard Specifications for Highway Construction dated 2009, Sections 200 through 800 are included by reference. Specifications listed in the contract as ODOT XXX.XX Description, where XXX.XX represents a specification number, refer to the current ODOT Standard Specification with the same number. Where references are made to ODOT as the agency contracting for the work, the reference will be read as "City of Broken Arrow" for City of Broken Arrow contracts. References to Engineer will be read as Contract Administrator for City of Broken Arrow contracts.

SP 5.0 CERTIFICATION: The CONTRACTOR shall furnish certification from the Engineer that all materials meet applicable specifications. Copies of material certification shall be furnished prior to installation or incorporation of material in the work.

SP 6.0 TAXES: This project is exempt from state and local sales tax.

SP 7.0 EQUIPMENT: Equipment and tools necessary for handling materials and performing all parts of the work shall be the responsibility of the CONTRACTOR as to design, capacity, and mechanical condition. The equipment shall be at the job site sufficiently ahead of the start of construction operations.

SP 8.0 STORAGE OF SUPPLIES AND EQUIPMENT: The CONTRACTOR shall be responsible for storing his supplies and equipment. CITY maintenance yards shall not be used for these purposes. However, equipment may be left parked on CITY right-of-way provided there is at least a 10-foot clear zone between the white travel edge line and the nearest portion of the equipment. The CITY shall not be liable for the CONTRACTOR's equipment in any way, or liable for any claims arising from incidents involving said equipment, while this equipment is parked upon CITY right-of-way. CONTRACTOR may use facility area for material storage but will need to coordinate with Plant Manager as well as Contract Administrator. CONTRACTOR shall minimize roadway area used as much as possible and shall minimize damage to the existing roadway surface (rubber tire vehicles preferred to tracked vehicles on existing asphalt). If additional laydown area is required, CONTRACTOR may need to negotiate with adjacent landowners.

SP 9.0 PAY ITEMS INCLUSIVE: Most contractual pay items should correspond with similar pay items used on CITY construction projects. However, some contractual items are more inclusive of size variations, in an attempt to avoid a lengthy bid sheet.

SP 10.0 MOBILIZATION: Mobilization included in contract.

SP 11.0 TIME RESTRICTIONS: CONTRACTOR should be aware of construction time restrictions on this project are from 7:00 A.M. – 7:00 P.M.

SP 12.0 CONTRACTOR'S PERSONNEL:

12.1. The CONTRACTOR's employees shall be identified with the name or logo of the CONTRACTOR. The CONTRACTOR's employees, officers, agents, and subcontractors shall at no time identify themselves as being employees of the CITY.

12.2 All drivers of the CONTRACTOR's equipment shall at all times possess and carry a valid and proper driver's license.

12.3 The CONTRACTOR's employees shall be properly trained and professional in the performance of their duties. The CITY may require that the CONTRACTOR remove from the job employees who endanger persons or property, display impolite and socially unacceptable behavior, or whose continued employment under this contract is inconsistent with the interest of the CITY and/or the public.

12.4 All of the CONTRACTOR's employees shall be U.S. citizens or legal aliens.

SP 13.0 TECHNICAL SPECIFICATIONS: Not Applicable.

SP 14.0 NOT USED

SP 15.0 PROGRESS SCHEDULE: Contractor is required to provide a progress schedule as set out in the Standard Contract Terms and Conditions.

SP 16.0 WATER FOR CONSTRUCTION:

Water will be provided via the nearest City of Broken Arrow hydrant at no cost to the Contractor. The Contractor will be responsible to obtain a Construction Meter from the City, paying a \$1,200 escrow deposit for use of the meter. The escrow money will be returned to the contractor when the construction meter is returned. Failure to return the meter within 2 working days after the Contract Administrator determines the meter is no longer required on the project could result in water charges, loss of some or all of the escrow deposit and contractor earnings withheld. Contractor is responsible for any damages to meter or hydrant he may cause. Contractor is responsible for transport and distribution of water as needed.

SP 17.0 COORDINATION OF DRAWINGS AND SPECIFICATIONS:

These Project Drawings, Technical Specifications, and all supplementary documents are essential parts of the Contract and a requirement in one is as binding as if in all. The City intends them to be complementary and to describe a complete Contract. In case of discrepancy between these Contract documents, the order of precedence is as follows: (1) For Information, Technical Specifications over Drawings; (2) For Dimensions, Project Drawings over Specifications. Project Drawings and Specifications both take precedence over supplementary documents.

SP 18.0 NOT USED

SP 19.0 NOT USED

# **SCHEDULES**

## **SCHEDULE A SCOPE OF WORK**

Customer hereby acknowledges and agrees that the scope of work shall be limited to, and ESCO shall only perform, the following:

### **MECHANICAL AND ELECTRICAL SYSTEM RENOVATION**

#### **HISTORY MUSEUM**

The following scope applies to the HVAC and electrical systems at City of Broken Arrow's Historical Museum:

#### **REPLACE AGED HVAC EQUIPMENT**

##### Demolition

1. Demolish (3) packaged direct expansion cooling with natural gas heating rooftop units located on roof of Historical Museum. Existing supply and return ductwork along with natural gas piping will be retained. Electrical feeders will be removed back to source panel.
2. Demolish existing linear slot supply diffusers along with return diffusers within the lobby area, Lobby 101. Associated supply and return ductwork will be removed back to their main trunk lines.

##### New Work

1. Provide (3) new direct expansion cooling with natural gas heating packaged rooftop units to serve floors 1, 2, and 3 of the Historical Museum. Each of the (3) new rooftop units will have hot-gas reheat for humidity control (dehumidification). New equipment will be sized per ASHRAE's recommended design ambient outdoor temperatures of 101°F/75°F (DB/WB) for summertime and 14°F (DB) for wintertime.
2. Existing supply air and return air duct within the facility will be reused and reconnected to new rooftop units. Natural gas piping will be reconnected to new equipment.
3. Within first floor lobby, Lobby 101, (2) new supply air grilles along with (1) return air grilles will be provided. New supply air ductwork and return air ductwork will be provided for the space to go along with the new, dropped ceiling and conversion from hard ceiling to accessible, lay-in ceiling. The (2) existing linear slot diffusers within Lobby 101 will be existing to remain.
4. New electrical feeders for the (2) new packaged rooftop units will be supplied and be in compliance with the 2020 National Electrical Code (NEC) that is adopted by the City of Broken Arrow.
5. System start-up for the (3) new rooftop units is included.
6. Airside test and balancing will be supplied for the (3) new rooftop units. Specific to the first floor that is served by RTU-1, a full diffuser level airside test and balance is included. The second and third floors (served by RTU-2 and RTU-3) will be limited to unit only test and balance.
7. Commissioning of new systems will be performed to ensure full function and operation.

##### Clarification

1. The (2) existing humidifiers serving the first and second floors are to remain. The only related scope associated with the existing humidifiers is tying their on/off control to the new rooftop units.

##### Mechanical Exclusions

- Materials and labor associated with modifications to existing systems and equipment not identified in these documents as included in the Scope of Work.
- Testing, adjusting, and balancing of existing systems not identified in these documents as included in the Scope of Work.
- Commissioning of existing systems not identified in these documents as included in the Scope of Work.
- Repair or replacement of ceiling beyond that required to accomplish the Scope of Work.
- Painting of floors, walls or ceilings beyond that required to match existing surfaces in the immediate work area.
- Waste disposal other than that required to accomplish the Scope of Work.
- Demolition of equipment, piping and accessories indicated herein to be abandoned in-place unless

indicated herein to be included.

- The cost for utilities including natural or propane gas, fuel oil, electricity, potable or non-potable water during the construction period.
- The cost for equipment and/or utilities to provide temporary heating or cooling of facilities during the construction period.
- Water treatment equipment not specified in the Scope of Work.
- Structural modifications not specified in the Scope of Work.
- Building envelope modifications not specified in the Scope of Work.
- Replacement of ductwork and diffusers not specified in the Scope of Work.
- Replacement of piping not specified in the Scope of Work.
- Ductwork and piping insulation not specified in the Scope of Work.
- Electrical systems not specified in the Scope of Work.
- Equipment replacement and their components not specified in the Scope of Work.

## **RELATED GENERAL CONSTRUCTION**

Schneider Electric will provide a turnkey solution to lower the ceiling in the Museum of Broken Arrow front lobby. The hallways extending from the front lobby will remain as they are now.

- Demo of existing ceiling
  - Demo existing ceiling and framing area and lower the ceiling approximately 16 inches.
- Diffusers
  - Mount diffusers to the new ceiling height.
- Fire Suppression / alarming / egress
  - Extend all existing fire suppression, alarming, and access / egress devices to match the new ceiling height.
- Lighting
  - Extend all existing light fixtures to match new ceiling height.
- Waste Disposal
  - Include any dumpster rental or haul off fees associated with removing any debris associated with their scope of work.
- Furring of the Wall / Ceiling System
  - Provide a turnkey furring system to accommodate lowering the ceiling.
- Acoustical Ceiling and Grid
  - Provide 2x4 ceiling tile and grid to match existing color/style as in the first floor exhibit space.
- Painting / Finishes
  - Paint the new drywall surfaces to match the existing color scheme.
  - Paint the existing vertical section in the entry way to match the existing color schemes.
  - Provide any painting and patching as necessary.
- Commissioning / Testing / Inspections
  - Commissioning of all systems in this scope of work.
  - Test all systems in the scope of work to ensure they are working properly
  - Include inspections needed

## **CLARIFICATIONS AND EXCLUSIONS**

- City will relocate all signs, banners and furniture as necessary in the lobby
- City will relocate security related devices including the wall-mounted device.
- No scope of work is included that is not specifically listed above.

## **BUILDING AUTOMATION SYSTEM**

### **GENERAL DESCRIPTION OVERVIEW**

A Schneider Electric EcoStruxure for Building Operation (EBO) is to be installed at the facilities listed below. The Schneider Electric Building Automation System (BAS) will include control and monitoring parameters as

outlined below for only the Museum of Broken Arrow and remote control for nine (9) other locations. The BAS will be controllable from a central workstation located on the owner's WAN/LAN (See Schedule E of contract). A web enabled interface will be supplied by Schneider Electric is to provide web access (with City IT allowance) to the system and its graphical Windows interface. Control zones will be programmed for temperature setup and temperature setback (as stated in Section II-H of contract), along with unoccupied dew point setup monitoring, and optimized schedules. Permanent scheduling, holiday scheduling, and temporary scheduling capabilities for each control zone will be provided.

ESCO will provide site-specific on-site training for BAS operation. This includes, but is not limited to, system architecture, controller and override panel operation, control drawings, device replacement, product overview and demonstration, logging on and off, system passwords, screen layout, software toolbars and menus, graphic page navigation and use, scheduling (regular, temporary, and special), and basic troubleshooting.

The facilities included are:

- Museum of Broken Arrow (Historical Museum)

Control will be provided for seven (7) electrical panels located on Main Street for control of specific circuits for the holiday lighting. Additionally, two (2) more time clocks, at the Farmers Market, shall be removed and replaced with new EBO hardware for remote time scheduling and override purposes of lighting/receptacle control. The purpose of this control is to provide the City with additional remote access to the Rose District lighting control.

Cellular communication to the Museum, for the street light panels, and time clock locations are to be provided by the City. The City is responsible for the discussed cellular network installation and connection from these disparate locations to a centralized point to be accessible from clients provided virtual machine. Schneider Electric shall have access to this virtual machine for installation, configuration, and operation of EBO for control of the Museum and other lighting receptacle circuits as indicated above.

ESCO will be responsible for all final design decisions including controller selection, point configurations, and end device selection and will base such decisions on current standards and engineering practices of ESCO.

#### **HISTORICAL MUSEUM**

A Schneider Electric BAS is to be installed with communicating network thermostats for control and monitoring of the rooftop units. New relays will be installed on the humidifiers for control. Exhaust fans will receive new occupancy sensors for localized control and not controlled by the BAS.

Control parameters are as follows:

##### **Rooftop Units (Typical of 2)**

<i>Control Points</i>	<i>Monitoring Points</i>
<ul style="list-style-type: none"><li>▪ Cooling Stage(s) Command</li><li>▪ Heating Stage(s) Command</li><li>▪ Supply Fan Command</li><li>▪ Hot Gas Reheat Command</li><li>▪ Humidifier Command</li></ul>	<ul style="list-style-type: none"><li>▪ Space Temperature</li><li>▪ Space Humidity</li><li>▪ Supply Air Temperature</li><li>▪ Supply Fan Status</li><li>▪ Remote Room Temperature (x1)</li></ul>

##### **Rooftop Unit (Typical of 1)**

<i>Control Points</i>	<i>Monitoring Points</i>
<ul style="list-style-type: none"><li>▪ Cooling Enable/Disable</li><li>▪ Heating Enable/Disable</li><li>▪ Supply Fan Command</li><li>▪ Hot Gas Reheat command</li></ul>	<ul style="list-style-type: none"><li>▪ Space Temperature</li><li>▪ Space Humidity</li><li>▪ Supply Air Temperature</li><li>▪ Supply Fan Status</li></ul>

## Miscellaneous

Control Points	Monitoring Points
• Time Clock Enable/Disable	▪ Outside Air Temperature ▪ Outside Air Humidity

## LIGHTING CIRCUITS AT OUTDOOR ELECTRIC PANELS

Seven locations on Main Street which provide circuits for outdoor lighting associated with the City of Broken Arrow (City) will be outfitted with a new gateway to enable Schneider Electric BAS to communicate with the existing electrical panels. Access via cellular modem from City's WAN to each panel is provided, installed/powered, and configured by the City. The outdoor lighting circuits will be integrated so that they can receive remote scheduling capabilities.

Control parameters are as follows:

### Outdoor Lighting Panels (Typical of 7)

Control Points	Monitoring Points
▪ Various Circuits for on/off Control <sup>1</sup>	

<sup>1</sup> – New gateway will allow access to remotely control existing breaker circuits. Exact amount from each panel is TBD by the City.

## OUTDOOR LIGHTING CIRCUITS AT TIME CLOCKS

A Schneider Electric BAS is to be installed with enable/disable control of two (2) City time clock locations outside of the Museum at the Farmers Market. These existing timeclocks are to be replaced with new Schneider Electric EBO hardware for the ability to remotely control existing controlled circuits. Access via cellular modem from City's WAN to each panel is provided, installed/powered, and configured by the City.

Control parameters are as follows:

### Outdoor Lighting Circuits at Existing Time Clocks (Typical of 2)

Control Points	Monitoring Points
▪ Lighting Circuit Enable/Disable	

## CLARIFICATIONS AND EXCLUSIONS

The following clarifications and exclusions apply to ESCO's scope of work above:

## CLARIFICATIONS

- To the best of Schneider Electric's knowledge, the points above represent all that are necessary to effectively operate the indicated systems. If additional points are required to operate the systems specifically indicated above per Schneider Electric's Sequences of Operation, they will be incorporated under this scope of work. If any of the points indicated above are unable to be included within the final system, such points shall be excluded from this scope of work. Points associated with new mechanical equipment (if applicable) are subject to change based on those points available from the equipment ultimately furnished and the points deemed necessary for operation of the system.
- ESCO may reuse existing equipment including (but not limited to) valves, dampers, and actuators for the execution of this contract, and assumes the equipment or devices are in good working order. Should the equipment or devices require repair or replacement, this will be the responsibility of the owner unless specifically indicated otherwise in the scope of work. ESCO will create an equipment deficiency report (EDR) to provide the owner with written notification if such equipment or devices are identified.

- ESCO will only control equipment and/or devices shown in the Scope of Work. Equipment and devices not in the Scope of Work are excluded. ESCO is not responsible for the functionality of such equipment even if such equipment is operated by an existing BAS.
- Matching of ceiling tile color and pattern shall be limited by current commercial availability should replacement tile be required. Similar or complementary tiles shall be provided where exact matches are not available.
- Demolition of the existing HVAC controls / building automation equipment will be performed as needed to implement the new DDC system installation (reuse of enclosures, wire, and end devices will be solely at the discretion of ESCO). The total demolition of any remaining abandoned or obsolete control elements will be the responsibility of the owner, unless otherwise stated.
- ESCO is not responsible for safeties on existing equipment not being replaced including smoke detectors, fire alarm interlocks, and low or high temperature cut-outs or any life safety equipment. Pre and post testing of smoke, fire, and life safety systems will be the responsibility of the customer and the sequence will be provided to ESCO. Where life safety equipment utilizes compressed air (pneumatics), the source of the air, logic, and actuators will not be removed or modified within the execution of the project.
- Exhaust fans controlled by occupancy sensors or local switches, that are process / life safety related, or that do not move air beyond the building envelope will not be integrated with the building management system.
- ESCO will not be responsible for any modification or expansion of the owner's existing WAN/LAN for the execution of this project. Owner to provide ESCO with designated open port(s) as required at existing network switches in all facilities within this scope of work. ESCO to provide CAT5e Ethernet cable from control equipment to Owner network switch. The City is providing, installing, and configuring cellular modem interface for each of the location listed above (with exception of Museum). The Museum will have standard networking switch access. The City shall aggregate the cellular modems and Museum into a single network that is made available through City provided Virtual Machine where the EBO system shall reside and control/monitor the scope outlined above.
- Where new control panels are to be installed, conduit will be installed from the panel knock-out to a height of 8' or the level of the finished ceiling if present – whichever is lower – for all low voltage wiring. Conduit will not be required in other applications unless otherwise indicated by the scope of work above. All wiring shall be in compliance with local codes and authorities having jurisdiction.

## EXCLUSIONS

- Costs of providing access, access control, or security escorts not specified in the Scope of Work are excluded.
- Hydronic / airflow testing and balancing on HVAC equipment will not be included as part of the controls scope of work.
- Repair of existing HVAC and control equipment beyond the scope of work above is excluded.
- Any repair patching of existing walls, sheetrock, plaster, brick, wood, etc due to the removal of existing thermostats (for retrofit with DDC Sensor or new thermostat) is excluded.
- Installation, powering, setup, or configuration of network architecture for access from City VM to remote locations.

## ROSE DISTRICT SIGNS COLOR CHANGING LIGHTS

Customer hereby acknowledges and agrees that the scope of work shall be limited to, and ESCO shall only perform, the following:

Provide and install color changing lights at two existing Rose District signs:

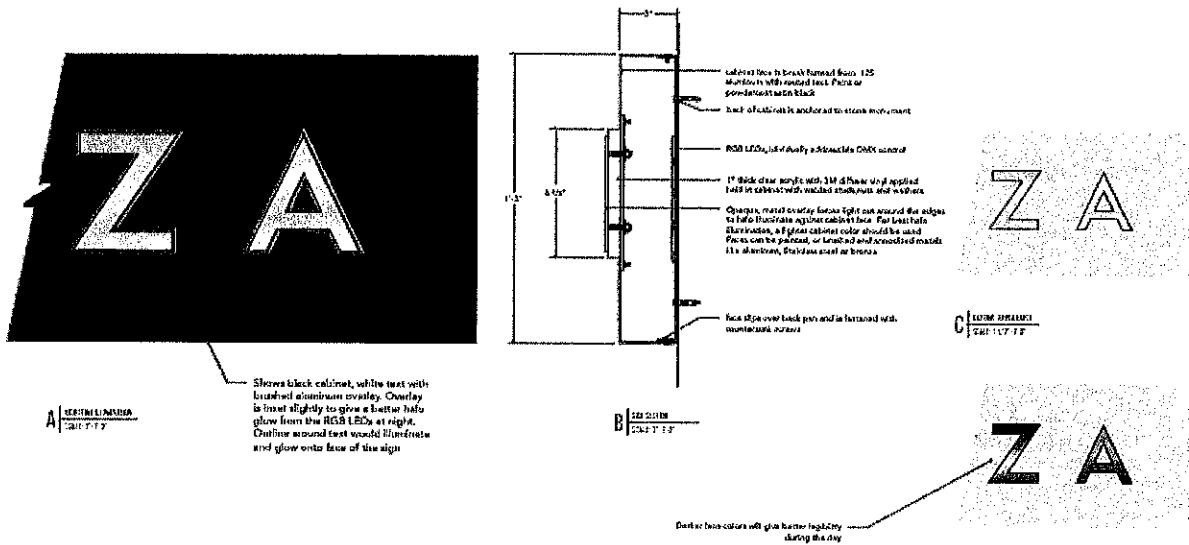
1. North sign (Kenosha and Main Streets intersection) – approximately 24 inches tall by 17.5 feet. In addition the lights in the tower at the north sign will be changed to RGB LED lights inside and connected to the same controller.
2. Farmers Market sign along Main Street – approximately 15 inches tall by 14 feet

The existing standoff letters at each sign will be removed and a new pan sign installed on the existing surface. The new signs will be black finished panels with push through acrylic letters. The letters will be illuminated with

RGB LEDs connected to a light controller at each sign.

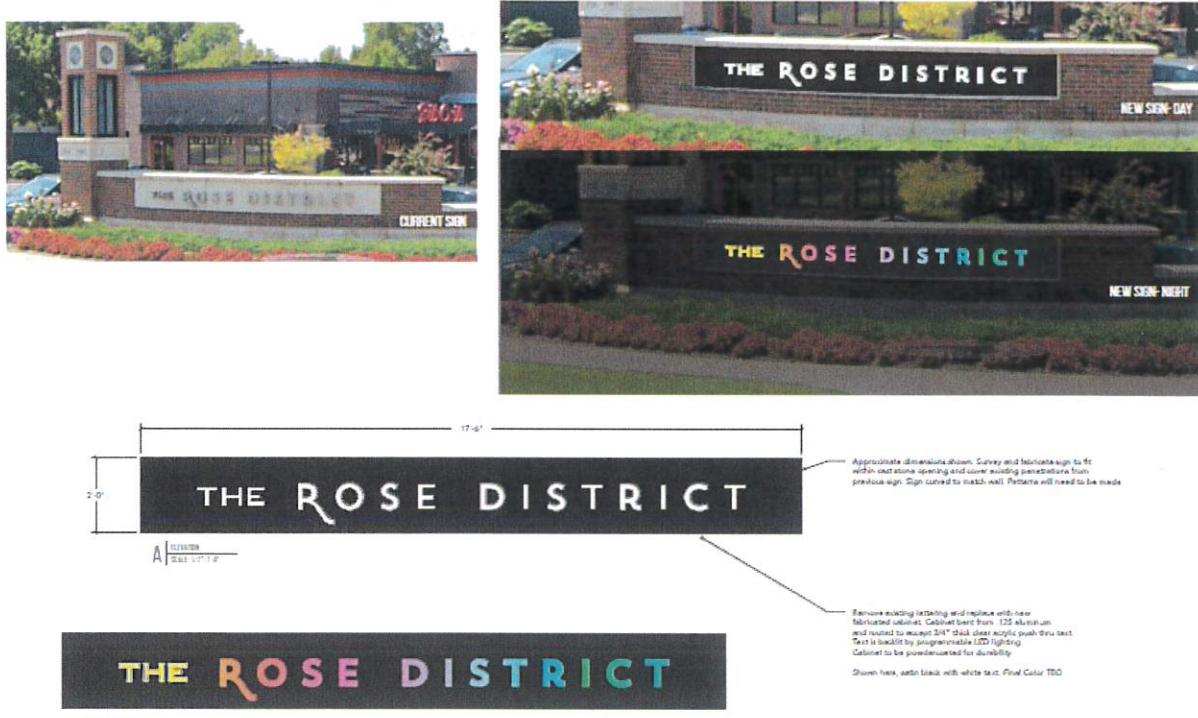
Preliminary drawings representing the intended upgrade design are provide below.

**Sign mounting detail typical of both signs.**

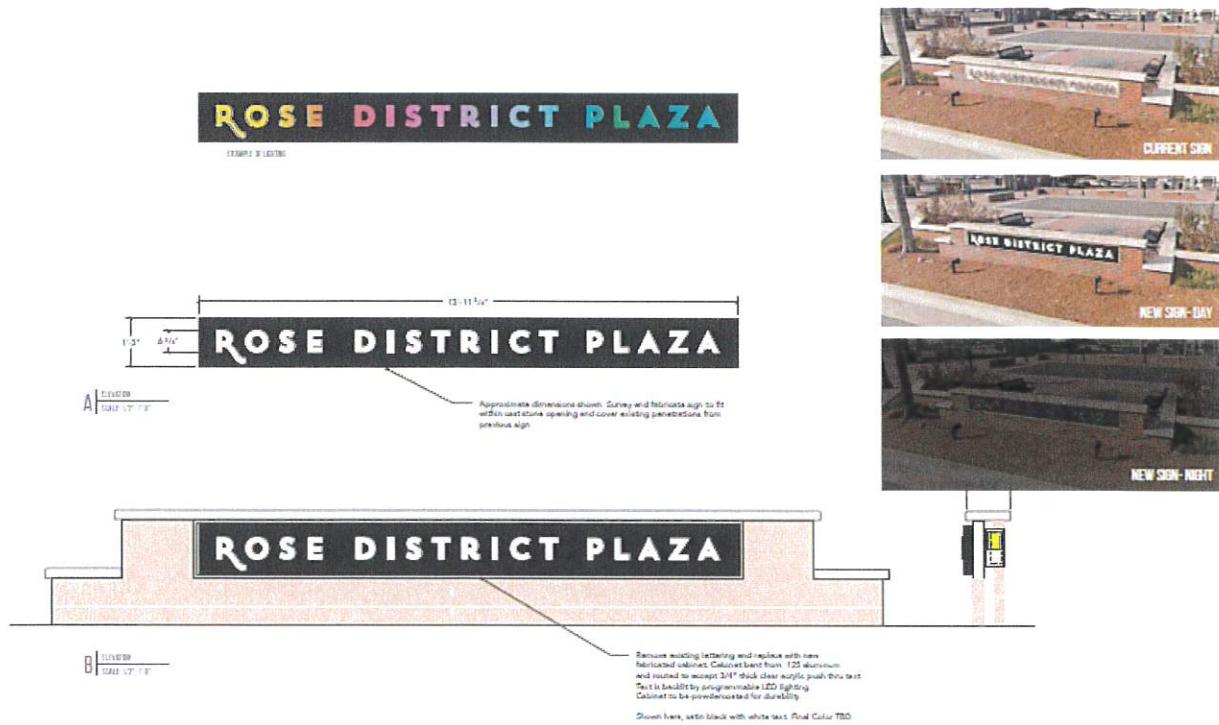


HALO LIT OPTION  
FOR LETTER DISPLAYS

## North Main Sign



## Farmers Market Sign



## EXCLUSIONS

1. Access via cellular modem from City's WAN to each panel is provided, installed/powered, and configured by the City. Cellular service to each sign is required to be provided to allow a cloud-based user access point.
2. Existing electrical power to be reused at each sign. Any necessary repairs to the existing electrical service is not anticipated and if necessary is excluded.

## **GENERAL (ALL SCOPES)**

The following services are provided for each of the scopes above:

1. Training will be provided to City staff for each of the new products and systems provided.
2. A full 1-year parts and labor warranty will be provided for each scope from the date of customer acceptance of that scope item. Any additional warranties provided by product manufacturers will be passed on to the City.

## **CLARIFICATIONS/EXCLUSIONS (ALL SCOPES)**

These clarifications and exclusions apply to all scopes of work.

- Night/holiday work unless otherwise specified in the Scope of Work.
- Additional labor cost due to restriction of allowable work hours.
- Costs incurred due to lack of access to required areas or due to access to storage areas to which materials are to be delivered.
- Costs of providing access, access control, or security escorts not specified in the Scope of Work.
- Hazardous material testing and abatement not specified in the Scope of Work. Asbestos abatement not part of Schneider Electric's scope of work. Customer shall have asbestos abated within the areas that impact mechanical, electrical and controls work prior to commencement of mechanical, electrical and controls work.
- Cost escalation of materials as a result of a delay in the construction schedule caused by Customer action or inaction.
- Inspection and permitting fees for agencies (state and/or federal) other than the local authority having jurisdiction.
- Fees for third party engineers acting as Customer's agent.

# SCHEDULE B

## PERFORMANCE ASSURANCE SUPPORT SERVICES AGREEMENT

This Performance Assurance Support Services Agreement ("Agreement"), is by and between Schneider Electric Buildings Americas, Inc. ("ESCO"), and "City of Broken Arrow" ("Customer"). To the extent that the terms and conditions in this Agreement conflict with the terms and conditions in the Contract, the terms and conditions of this Agreement shall control. Any capitalized terms used and not defined herein are as defined in the Contract.

City of Broken Arrow

Schneider Electric Buildings  
Americas, Inc.

By \_\_\_\_\_  
(Signature)

By

  
(Signature)

Print Name

Print Name



Title

Title

  
Director of Operations

Date

Date

  
3/1/2024

### **A. TERM**

This Agreement shall commence at the Savings Guarantee Commencement Date and continue for one (1) year (the "Initial Term") and shall automatically renew for additional one (1) year periods thereafter. After the Initial Term, Customer may terminate this Agreement at any time prior to thirty (30) days to the end of the then current term.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OR IN ANY CONTRACT DOCUMENT, IN THE EVENT THAT THIS AGREEMENT IS CANCELED OR TERMINATED BY CUSTOMER FOR ANY REASON, THE PERFORMANCE GUARANTEE SET FORTH IN SCHEDULE C SHALL BE DEEMED TO HAVE BEEN MET AND FULFILLED, NULL AND VOID AND OF NO FURTHER FORCE OR EFFECT AS OF THE EFFECTIVE TERMINATION DATE OF THIS AGREEMENT AND ESCO SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES ASSOCIATED WITH SUCH PERFORMANCE GUARANTEE.

### **B. SERVICE SCOPE AND PAYMENT**

ESCO shall provide the Performance Assurance Support Services (the "Services") to Customer as set forth in Exhibit A, Section 1 during the Initial Term.

After the end of Initial Term and each subsequent term thereafter, Customer may either (1) continue with the same level of Services as set forth in the previous term, (2) change the Services level by selecting one or more of the options as set forth in Exhibit A, Section 2 if any of this Agreement, or (3) terminate this Agreement and the Performance Guarantee in accordance with the termination provisions contained herein.

The available Services options may be amended from time to time at the sole discretion of ESCO.

1. After the Initial Term, the prices set forth in Exhibit A shall be adjusted upwards annually in accordance with the increase in Consumer Price Index ("CPI").
2. After the Initial Term, payment under this Agreement is due within thirty (30) days of the start of that year's

term. ESCO reserves the right to add 1.5% per month to any balance due beyond thirty (30) days of invoice date. Customer acknowledges and understands that all charges are exclusive of any applicable federal, state, or local use, excise, sales taxes or similar fees whether charged to or against ESCO or Customer for the Services. Customer may utilize purchase orders for ease of administration and ordering purposes in implementation of this Agreement (to include: specific products or services, scope of work, quantities, price and delivery terms only), however, no pre-printed, additional, inconsistent or different terms contained or referenced in such purchase order shall have any force or effect, it being the intent of the parties that the terms of this Agreement shall apply.

## **C. ACCESS**

Services provided under this Agreement will be performed during normal working hours (normal working hours shall mean 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding ESCO holidays) unless specifically stated otherwise in this Agreement. However, ESCO may have the need to access Customer facilities during non-normal working hours and on holidays in order to identify and troubleshoot energy savings issues. Therefore, Customer will provide and permit ESCO reasonable access to Customer's facility and equipment to the extent necessary for ESCO'S personnel to perform the Services. Customer shall also provide access to key personnel to discuss facility operating requirements. ESCO will use commercially reasonable efforts to minimize any disturbance with Customer's operations while providing the Services.

## **D. RELATIONSHIP**

Customer and ESCO are independent contracting parties. Nothing in this Agreement shall be construed to make either party or any of its employees, the partner, joint venturer, agent, or legal representative of the other for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in the name of the other party. As an independent contractor, the mode, manner, method and means employed by ESCO in the performance of the terms and conditions of this Agreement shall be of ESCO'S selection and under the sole control and direction of ESCO. Under the terms of this Agreement, neither Customer nor any company in which it owns a controlling interest shall be required to furnish ESCO or any of its employees with any benefits, including but not limited to severance benefits, unemployment compensation or worker's compensation.

## **E. INSURANCE**

Section 23 (Worker's Compensation, Employer's Liability Insurance, Owner's Risk and Liability Insurance and Property Insurance Requirements) of the City of Broken Arrow's Standard Contract Terms and Conditions for a Public Construction Project, as negotiated by the parties, is hereby incorporated by reference and made a part of this Agreement.

## **F. LIMITATION OF LIABILITY**

Section 34 (Limitations of Liability) of the City of Broken Arrow's Standard Contract Terms and Conditions for a Public Construction Project, as negotiated by the parties, is hereby incorporated by reference and made a part of this Agreement.

## **G. EXCUSABLE DELAY**

Any delay or failure of either party to perform its obligations hereunder (with the exception of payment) shall be excused, and time to perform extended, and shall not be held liable if and to the extent that the delay or failure to perform is caused by an event or occurrence beyond the reasonable control of the party whose performance is interfered with, and without its fault or negligence and which by the exercise of due diligence, said party is unable to prevent.

## **H. SUCCESSORS**

Neither this Agreement nor any rights arising hereunder may be assigned, pledged, transferred or hypothecated by ESCO without the consent of Customer; such consent cannot be unreasonably withheld. No Work performed

pursuant to this Agreement may be subcontracted in whole or in part by ESCO without the prior written consent of Customer; such consent cannot be unreasonably withheld.

**I. ENTIRE AGREEMENT**

This Agreement sets forth the entire understanding between the parties and supersedes all prior oral or written understandings relating to the subject matter herein. This Agreement may not be altered or modified in any way except by written instrument signed by a duly authorized representative of each party.

**J. SEVERABILITY**

If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

**K. GOVERNING LAW**

This Agreement will be governed, interpreted and construed by, under and in accordance with the laws, statutes and decisions of the state in which the Services are to be performed, without regard to its choice of law provisions. Venue shall be in the federal, state or municipal courts serving the county in which the Services are performed.

# **SCHEDULE B: EXHIBIT A**

## **PERFORMANCE ASSURANCE SUPPORT SERVICES**

### **SECTION 1 – SERVICES DURING INITIAL TERM**

ESCO shall provide the Performance Assurance Support Services (the "Services") defined below to Customer during the Initial Term as defined in Schedule B.

**Contract Year 1-Price is included in the contract price.**

#### Optimization

Schneider Electric will remotely access your energy management system 2 times each year to perform this service. During each session, the system will be inspected, and variables will be compared to a preapproved list to determine if the system is operating correctly. Any findings that contradict the pre-approved list will be corrected. Additionally, Schneider Electric will inspect the system for other areas of malfunction or energy waste and report those findings for Customer review. All findings, corrected or not corrected, will be reported and that report delivered to customer. Schneider Electric will notify Customer if remote access is not available Customer is responsible for restoring remote access and notifying Schneider Electric. Schneider Electric is not responsible for providing the planned service session if remote access is unavailable.

#### Training

Schneider Electric will provide 8 hours of On-Site training. Customer will schedule training sessions at least 14 days in advance. Schneider Electric and Customer will work to schedule a mutually acceptable date for each visit. Customer will be responsible for providing access to the training location and paying for any fees associated with that location. The training location must include internet and Customer EMS access. Schneider Electric does not impose any restrictions on the number of Customer employees attending training sessions so long as the location will accommodate that number.

#### Remote System Monitoring and Reporting

Schneider Electric will remotely access your energy management system on a bi-monthly basis. During each session, the system will be inspected, and variables will be compared to the contractual agreement. Additionally, Schneider Electric will inspect the system for other areas of malfunction or energy waste and report those findings for Customer review. All findings will be reported, and that report will be delivered to Customer electronically. Schneider Electric will notify Customer if remote access is not available. Customer is responsible for restoring remote access and notifying Schneider Electric. Schneider Electric is not responsible for providing the planned service session if remote access is unavailable.

#### Remote Energy Management, Training & Technical Support

Schneider Electric will provide 10 hours of remote energy management support. This time can be used for any of the following activities including scheduling, system adjustment, on-demand remote energy management system training or technical support. All Remote Support is client initiated, and it is the expectation of Schneider Electric that if a client does not remain on the phone for the duration of the time required to accomplish the task, the customer will accept the time, up to the limit of the hours already purchased and not used, that the Schneider Electric representative documents as used for that task. No credit will be given towards future years if all of the 10 hours are not used by the end of the project year. If all of the hours are exhausted at any time before the end of the year, additional hours can be purchased in 10-hour blocks which will remain available for use until the end of the next project year.

#### Measurement & Verification with Savings Reporting Portal

Schneider Electric will perform the measurement & verification as outlined in the M&V plan and will update the energy savings and performance portal as data is received. This website contains charts and graphs showing the energy savings by month and by meter for the project. Customer will be given web access to the Schneider Electric eSavings website for the contacts specified by Customer. Changes to that contact list can be made at any time. Data can only be updated on this website if utility bills and other necessary information are provided. If bills and other necessary information are not provided, Schneider Electric is not responsible for maintaining updated information in the energy savings and performance portal until the missing data is provided.

#### On-Site Visit

Schneider Electric will provide On-Site Energy Consulting consisting of 2 site visits per year. This service will include a site assessment to determine current conditions and identify areas of improvement. Each site visit will be documented in a report indicating the findings and outlining a plan for further improvement. Customer is responsible for providing access to all mechanical and electrical equipment and any supervision required by Customer. Site visits must be requested 14 days or more prior to the requested date. Schneider Electric and Customer will work to schedule a mutually acceptable date for each visit.

## **SECTION 2 – SERVICES AFTER INITIAL TERM**

After the end of Initial Term and each subsequent term thereafter, Customer may either (1) renew the same level of Service as set forth in the Initial Term or previous term, (2) change the Service level by selecting one or more of the options defined below, or (3) terminate this Agreement and the Savings Guarantee in accordance with the termination provisions contained herein. All prices will be calculated at the time of renewal.

### **Contract Year 2+ With Scope As Defined Herein (\$10,831)**

#### Optimization

Schneider Electric will remotely access your energy management system 2 times each year to perform this service. During each session, the system will be inspected, and variables will be compared to a preapproved list to determine if the system is operating correctly. Any findings that contradict the pre-approved list will be corrected. Additionally, Schneider Electric will inspect the system for other areas of malfunction or energy waste and report those findings for Customer review. All findings, corrected or not corrected, will be reported and that report delivered to customer. Schneider Electric will notify Customer if remote access is not available Customer is responsible for restoring remote access and notifying Schneider Electric. Schneider Electric is not responsible for providing the planned service session if remote access is unavailable.

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Schneider Electric will remotely access your energy management system on a bi-monthly basis. During each session, the system will be inspected, and variables will be compared to the contractual agreement. Additionally, Schneider Electric will inspect the system for other areas of malfunction or energy waste and report those findings for Customer review. All findings will be reported, and that report will be delivered to Customer electronically. Schneider Electric will notify Customer if remote access is not available. Customer is

responsible for restoring remote access and notifying Schneider Electric. Schneider Electric is not responsible for providing the planned service session if remote access is unavailable.

#### Remote Energy Management, Training & Technical Support

Schneider Electric will provide 10 hours of remote energy management support. This time can be used for any of the following activities including scheduling, system adjustment, on-demand remote energy management system training or technical support. All Remote Support is client initiated, and it is the expectation of Schneider Electric that if a client does not remain on the phone for the duration of the time required to accomplish the task, the customer will accept the time, up to the limit of the hours already purchased and not used, that the Schneider Electric representative documents as used for that task. No credit will be given towards future years if all of the 10 hours are not used by the end of the project year. If all of the hours are exhausted at any time before the end of the year, additional hours can be purchased in 10-hour blocks which will remain available for use until the end of the next project year.

#### Measurement & Verification with Savings Reporting Portal

Schneider Electric will perform the measurement & verification as outlined in the M&V plan and will update the energy savings and performance portal as data is received. This website contains charts and graphs showing the energy savings by month and by meter for the project. Customer will be given web access to the Schneider Electric eSavings website for the contacts specified by Customer. Changes to that contact list can be made at any time. Data can only be updated on this website if utility bills and other necessary information are provided. If bills and other necessary information are not provided, Schneider Electric is not responsible for maintaining updated information in the energy savings and performance portal until the missing data is provided.

#### On-Site Visit

Schneider Electric will provide On-Site Energy Consulting consisting of 2 site visits per year. This service will include a site assessment to determine current conditions and identify areas of improvement. Each site visit will be documented in a report indicating the findings and outlining a plan for further improvement. Customer is responsible for providing access to all mechanical and electrical equipment and any supervision required by Customer. Site visits must be requested 14 days or more prior to the requested date. Schneider Electric and Customer will work to schedule a mutually acceptable date for each visit.

The available service options may be amended from time to time at the sole discretion of ESCO.

## SCHEDULE C

### PERFORMANCE GUARANTEE

The Performance Guarantee provided by ESCO will be as follows:

Year	IPMVP Option D Savings	Capital Cost Avoidance	Annual Guaranteed Savings	Cumulative Guaranteed Savings
0	\$0	\$0	\$0	\$0
1	\$1,806	\$45,860	\$47,666	\$47,666
2	\$1,861	\$47,235	\$49,096	\$96,762
3	\$1,916	\$48,653	\$50,569	\$147,331
4	\$1,974	\$50,112	\$52,086	\$199,417
5	\$2,033	\$51,615	\$53,649	\$253,065
6	\$2,094	\$53,164	\$55,258	\$308,323
7	\$2,157	\$54,759	\$56,916	\$365,239
8	\$2,222	\$56,402	\$58,623	\$423,862
9	\$2,288	\$58,094	\$60,382	\$484,244
10	\$2,357	\$59,837	\$62,193	\$546,438
11	\$2,428	\$61,632	\$64,059	\$610,497
12	\$2,500	\$63,481	\$65,981	\$676,478
13	\$2,575	\$65,385	\$67,960	\$744,438
14	\$2,653	\$67,347	\$69,999	\$814,437
15	\$2,732	\$69,367	\$72,099	\$886,536
16	\$2,814	\$71,448	\$74,262	\$960,798
17	\$2,899	\$73,591	\$76,490	\$1,037,288
18	\$2,986	\$75,799	\$78,785	\$1,116,073
19	\$3,075	\$78,073	\$81,148	\$1,197,221
20	\$3,167	\$80,415	\$83,583	\$1,280,804
Total	\$48,537	\$1,232,267	\$1,280,804	

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OR IN ANY CONTRACT DOCUMENT, IN THE EVENT THAT THE PERFORMANCE ASSURANCE SUPPORT SERVICES AGREEMENT IS CANCELED OR TERMINATED BY CUSTOMER FOR ANY REASON, THE PERFORMANCE GUARANTEE SET FORTH IN THIS SCHEDULE C SHALL BE DEEMED TO HAVE BEEN MET AND FULFILLED AS OF THE EFFECTIVE TERMINATION DATE OF THE PERFORMANCE ASSURANCE SUPPORT SERVICES AGREEMENT AND ESCO SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES ASSOCIATED WITH SUCH PERFORMANCE GUARANTEE.

The procedure used to calculate savings is described in Schedule D.

#### GUARANTEED SAVINGS RECONCILIATION

Customer, if required, will send ESCO all necessary utility or energy data as set forth in Schedule E herein. Within sixty (60) days of receipt of such information for the previous Guarantee Year, ESCO will determine the Actual Savings for such Guarantee Year hereafter defined as "Savings Reconciliation".

In the event the Actual Savings are less than the Guaranteed Savings for the corresponding twelve (12) months, ESCO will pay Customer the difference between the Annual Savings Guarantee and the Actual Savings for the corresponding twelve (12) months. ESCO will make payments for any savings shortfall to Customer within thirty (30) days of that year's Savings Reconciliation. In the event that there are any Excess Savings, such Excess Savings shall be used to offset any payments made by ESCO with respect to any shortfall.

If ESCO has written a savings shortfall check to Customer, and later Actual Savings exceed the Performance Guarantee to date, Customer will reimburse ESCO up to the amount of ESCO'S shortfall check(s), to the extent that the shortfall is made up by Excess Savings.

## SCHEDULE D

### MEASUREMENT & VERIFICATION PLAN

#### PROJECTED ANNUAL SAVINGS

The Performance Guarantee as established in Schedule C shall consist of savings from multiple scopes of work. The projected savings from each scope of work is presented in the table below.

Site	Annual Projected Savings		
	Electric		Natural Gas
	kWh	kW	Therm
Historical Museum	20,261	23	208

The projected savings in the table above are provided for reference only and are not intended to construe a savings guarantee by meter, facility, or energy unit. The savings guarantee is fully defined in Schedule C.

#### ENERGY, WATER, AND OPERATIONS & MAINTENANCE (O&M) RATE DATA

The cost of energy in any period will be determined by applying the rates as defined below ("Baseline Energy Rates"), or the actual energy rates during the period, at the discretion of ESCO, to the energy used in a given period for each fuel type. These rates will escalate at 3% per year beginning in Year 2.

Utility Company:	AEP		
Rate Schedule:	Electric Rate 254		
Component	Charge	Unit	Description
Customer Charge	\$58.87		per month
On-Peak Consumption Tier 1	\$0.06968	kWh	First 150 kWh/kW
On-Peak Consumption Tier 2	\$0.05902	kWh	Next 150 kWh/kW
On-Peak Consumption Tier 3	\$0.02416	kWh	All kWh over 300 kWh/kW
Off-Peak Consumption Tier 1	\$0.04687	kWh	First 150 kWh/kW
Off-Peak Consumption Tier 2	\$0.03754	kWh	Next 150 kWh/kW
Off-Peak Consumption Tier 3	\$0.02150	kWh	All kWh over 300 kWh/kW
Fuel Charge	\$0.03476	kWh	All kWh
Riders	\$0.01238	kWh	
ETR	-4.83%		Applies to all above charges
Franchise Tax	6.00%		Applies to all above charges
On-Peak Season: billing months June through October			
Off-Peak Season: billing months November through May			

Utility Company:	Oklahoma Natural Gas		
Rate Schedule:	ONG Rate		
Component	Charge	Unit	Description
Service Charge	\$102.98		per month
Fuel Cost Charge	\$0.4417	Therms	All Therms
Franchise Fee	4.25%	Therms	All Therms
Winter Event Cost Recovery	\$50.17		per month

#### COMMON ECM ASSUMPTIONS

#### WEATHER DATA SOURCE

Data for weather compensation adjustments will be actual climate data obtained from the National Weather Service Station at TULSA, OK (TUL). In the event the specified weather station is de-activated, weather data will be collected from the nearest weather station with suitable observations. If the data source becomes unavailable or a superior source is identified, ESCO may select an alternative data source with Customer's approval.

## ANNUAL CALENDAR OF EVENTS

Provided below is a table summarizing the annual calendar of events that will be used as a basis in calculations, unless otherwise specified. In the event that there are any changes or deviations to this annual calendar, an appropriate adjustment will be made in accordance with the "Adjustment Schedule" set forth in Schedule E.

Date(s)	Event
Jan 1	New Years Day
Jan 16	Martin Luther King Jr. Day
Feb 20	Presidents' Day
Apr 7	Good Friday
May 29	Memorial Day
Jul 4	Independence Day
Sep 4	Labor Day
Nov 10	Veterans Day
Nov 23-24	Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day

## BUILDING OCCUPANCY SCHEDULES AND STANDARDS OF SERVICE AND COMFORT

Provided below is a table summarizing the building occupancy schedules and temperature setpoints used within the calculations, unless otherwise specified. Customer agrees to operate the conditioned spaces in the facilities within the temperature ranges scheduled in the table below. In the event that there are any changes or deviations to this occupancy schedule, an appropriate adjustment will be made in accordance with the Adjustment Schedule set forth in Schedule E.

Facility	Day Type	Daily Schedule
The Broken Arrow Museum	Monday	Unoccupied
	Tuesday	10:00 AM - 4:00 PM
	Wednesday	10:00 AM - 4:00 PM
	Thursday	4:00 PM - 4:00 PM
	Friday	10:00 AM - 4:00 PM
	Saturday	10:00 AM - 2:00 PM
	Sunday	Unoccupied
	Holidays	Unoccupied

	Heating	Cooling
Occupied	67°F	72°F
Unoccupied	64°F	75°F

## MEASUREMENT & VERIFICATION DETAILS

### ***Option D – Calibrated Computer Simulation***

- A. Overview of M&V Plan, and Savings Calculation**
- B. Energy Savings Calculations**
- C. Parameter Estimates**
- D. Cost Savings Calculations**

#### **A. Overview of M&V Plan, and Savings Calculation**

The method of determining energy savings described in this section uses “Option D – Calibrated Simulation” as described in the International Performance Measurement and Verification Protocol (IPMVP). In brief, the energy savings resulting from this project will be measured as follows:

A computer simulation will be used to estimate the Post-Retrofit energy use. The Baseline energy use will be used to calibrate a computer simulation. This calibrated computer model will be modified by implementing the effect of the ECMS to generate a simulation of the Post-Retrofit energy use. The energy savings from the project at each facility will be the difference between the calibrated Baseline energy use and the Post-Retrofit simulated energy use that is determined each Guarantee Year.

#### **B. Energy Savings Calculations**

Energy and demand units saved will be determined by the following equation:

$$E_S = E_B - E_G$$

Where:

$E_S$  = Energy Units Saved

$E_B$  = Modeled Baseline Energy Use

$E_G$  = Modeled Guarantee Period (Post-Retrofit) Energy

The energy savings computed using this technique will be determined each year based on Performance Period (Post-Retrofit) parameters.

#### Baseline Energy Use

##### *Normalized Base Year*

The Normalized Base Year energy use is the output of the calibrated computer simulation, modified to account for the conditions before the project. The following steps outline the process for calibrating the computer simulation and determining the Normalized Base Year energy use.

The Baseline energy use that is to be used for calibrating the computer simulation for the facilities will be retrieved from the account listed in the table below.

Meter Name	Account	Utility Type	Utility Company	Rate	Units
Historical Museum Gas	210104103 2497902 45	Natural Gas	ONG	200-LDI	Therms
Historical Museum Electric	9597942140	Electric	AEP	254	kWh, kW

#### *Collect all Measurements and Finalize Calibration Data*

During the development period, all information used for calibrating the pre-project computer model was collected. If data was missing or data collection errors were present, the missing data was estimated. If applicable, this estimated data will be presented for review and approval.

#### *Weather Normalize the Utility Data*

In order to remove the effects of the single measurement year's weather from the savings calculation, the utility data should be modified to represent the level of energy use in a typical year. This was accomplished by modeling the relationship between weather and energy use during the pre-project measurement year. The "Normal" set of weather for the same weather station was used as an input to the weather model. The data used for the weather normalization is identified in Schedule D, Common Assumptions. If a statistically significant relationship between the measurement year's weather and the measurement year's energy use could not be derived with this simplistic model, this step will be delayed. In that case, the computer simulation will not be created and calibrated using normalized data, but will instead be created and calibrated using measurement period data. The weather input to the computer simulation will then be adjusted to calculate the normalized utility data.

#### *Calibrate the Computer Simulation*

Using the Normalized Utility Data and all other information collected about the pre-retrofit facilities, a computer simulation of each facility was created and calibrated. The software used for these models is eQuest. Each model was calibrated with assumptions, estimations, and measured data from the actual pre-retrofit period conditions. Model results will be available for review.

#### *Normalize the Facility Conditions to the Base Year Conditions*

Each facility is a dynamic place that can experience significant changes impacting the energy use. All changes to the facility outside of those created from the retrofit should be modified in the calibrated model to reflect the conditions during the Base Year. Examples of changes that may fall into this category include: building renovations/additions, HVAC system additions/renovations, occupancy hours, set-points, customer initiated ECMs, etc. The purpose of this step is to avoid unfairly taking credit or losses due to changes outside the scope of the project. Base year conditions are summarized in the table below.

#### Baseline Conditions:

Facility	Day Type	Daily Schedule
Historical Museum	Monday	Unoccupied
	Tuesday	6:00 AM – 8:00 PM
	Wednesday	6:00 AM – 8:00 PM
	Thursday	6:00 AM – 8:00 PM
	Friday	6:00 AM – 8:00 PM
	Saturday	6:00 AM – 8:00 PM
	Sunday	Unoccupied
	Holidays	Unoccupied

	Heating	Cooling
Occupied	67°F	72°F
Unoccupied	67°F	75°F

#### Guarantee Period (Post-Retrofit) Energy

#### *Modify the Computer Simulation to Include ECMs*

The final step to creating the Post-retrofit Year energy use is to implement the changes caused by the ECMs in the computer simulation. Each ECM will be implemented individually so the savings performance can be analyzed by ECM. Additionally, actual post-retrofit conditions will be included in the post-retrofit model. A baseline adjustment may also be included if these parameters are outside of the parameters given in the Standards of Comfort. Measurements taken during the Investment Grade Audit may be required to properly model pieces of equipment that have experienced significant changes.

#### Facility Data

During the Investment Grade Audit, detailed facility information was collected for use in savings projections. Throughout the construction period and first performance year, detailed information about the Post-Retrofit conditions is collected as well. Trend data from the Building Automation System may also be collected during the

audit and performance phases. All facility information collected during these periods will be used to assist in the calibration of the computer models. This will include, but is not limited to, variables such as equipment size, operating hours, and temperature setpoints.

### **C. Parameter Estimates**

Calibration of the models will require making estimates in place of measured data for many parameters. Because the data collected for each building and simulation during the Investment Grade Audit and Post-Retrofit periods will be different, it is not possible to individually list all estimated parameters. In all cases where reliable measured data has been collected by Schneider Electric, that data will be used in place of estimated parameters.

The key parameter estimates that will be used to represent the Baseline operating conditions can be found in Schedule D: Common ECM Assumptions Section.

### **D. Cost Savings Calculations**

Provided below are the methods and equations used to determine the cost savings associated with this particular methodology.

Cost Savings are calculated as the difference between the baseline and Performance Period energy costs using the utility rates as defined in Schedule D, Energy and O&M Rate Data. These rates will escalate by 3% per year beginning in Year 2.

The applicable utility rates will be applied to the baseline and Performance Period energy use for the accounts in Paragraph C. Equation 5 will be used to compute the total cost savings for each Guarantee Year.

#### **Equation 5 – Total Cost Savings**

$$\$_{\text{save}} = \sum_{i=1}^n \left[ \sum_{k=1}^q (\$_{\text{Baseline}} - \$_{\text{Performance}})_k \right]_i$$

Where,

$\$_{\text{save}}$  = Guarantee year cost savings

$\$_{\text{Baseline}}$  = Billing period k baseline utility cost for account i

$\$_{\text{Performance}}$  = Billing period k performance period utility cost for account i

n = Total number of accounts

q = Total number of billing periods for account i

## **NON-MEASURED SAVINGS**

- A. Overview of M&V Plan, and Savings Calculation**
- B. Annual Non-Measured Savings**

### **A. Overview of M&V Plan, and Savings Calculation**

The Actual Savings associated with this methodology will be agreed upon as outlined herein and will not be verified by measurements after implementation has occurred. Customer and ESCO agree to accept the annual savings values included in Section B with no additional verification. In the event that verification steps are performed by Customer or ESCO, the annual savings values included in Section B will still be the reported savings and values used for reconciling the guarantee in Schedule C. Section B details the agreed upon savings by measure and by category.

### **B. Annual Non-Measured Savings**

#### Avoided Capital Cost Savings

The savings in the table below are due to replacement of equipment at the end of its' useful life and will be claimed for each Guarantee Year after the Savings Guarantee Commencement Date. These savings will escalate at 3% per year beginning in Year 2.

Avoided Capital Savings Measure	Cost Savings
Capital Cost Avoidance	\$45,860

## **SCHEDULE E**

# **CUSTOMER RESPONSIBILITIES FOR PERFORMANCE GUARANTEE**

### **GENERAL RESPONSIBILITIES**

Customer acknowledges and agrees that proper maintenance is essential to any energy conservation program. Therefore, Customer agrees to undertake the following responsibilities:

Customer agrees to: (1) provide, or cause its suppliers to provide, periodic utility invoices to ESCO within ten (10) days of receipt, (2) execute all Customer responsibilities as outlined herein, and (3) provide to ESCO reasonable access to all Customer facilities and information necessary for ESCO to perform its responsibilities. Access will include, but is not limited to, the following items:

- All buildings listed within this Contract
- All buildings served by the meters listed within this Contract
- All mechanical equipment rooms in the buildings listed within this Contract
- All temperature control and energy management systems which control part or all of any of the buildings listed within this Contract
- Personnel with responsibility for operating and/or managing any of the buildings listed within this Contract
- Monthly utility invoices and billing history for all of the meters listed within this Contract
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed within this Contract
- Any data from meters or sub-meters relevant to M&V associated with this Contract

Customer will solely be responsible for providing communications and/or network interface to all buildings for operation and PASS support.

Customer will perform daily facilities monitoring and promptly review any alarm summaries.

Customer will designate a "Primary Operator" of the system. The Primary Operator is defined as the individual who will be trained by ESCO during the installation period and will be responsible for daily operation and maintenance of the equipment and systems necessary to achieve the Performance Guarantee. Customer will notify ESCO within five (5) days after the departure or termination of the Primary Operator. Within ten (10) days of the departure of the current Primary Operator, Customer will designate a new Primary Operator and shall provide ESCO access to train the new Primary Operator. ESCO shall train a new Primary Operator at the sole expense of Customer on a time and materials basis.

### **MAINTENANCE RESPONSIBILITIES**

Customer agrees to use its best efforts to maintain the ECMs in original operating condition ("Original Operating Condition") with allowance for normal wear and tear. If an ECM is operating at any state other than the Original Operating Condition as defined above ("Failed ECM"), Customer agrees to (1) repair or replace the ECM immediately, and (2) contact a PASS representative at 1-800-274-5551 option 4, within 24 hours of such event. ESCO reserves the right to adjust the amount of Performance Guarantee associated with the Failed ECM for the duration of the failure in the Annual Savings Guarantee.

Customer will agree to maintain all parts of the Project site(s) where the ECM(s) reside including but not limited to components, equipment, machinery, energy management systems, structure of the facility(s), computer hardware, network and IT systems, either existing or newly installed. Customer must comply with the general maintenance requirements specified by equipment manufacturers and the maintenance tasking guidelines included in the operating and maintenance manual. Customer will be responsible to provide to ESCO documentation that proper maintenance has been performed at ESCO'S request within fifteen (15) days of written request.

Notwithstanding anything to the contrary contained herein, all ECM(s) must be maintained in proper working condition in all cases where the performance of said ECM(s) affects or could affect the ability to achieve, measure or verify the Annual Savings Guarantee. Should Customer refuse to perform the required maintenance as required in this Contract, ESCO and Customer shall agree to one of the following means of recourse: (1) ESCO will adjust the Performance Guarantee associated with that ECM pursuant to Schedule E, or (2) ESCO may terminate this Performance Guarantee and any and all obligations and liabilities of ESCO associated therewith upon fifteen (15) days written notice.

## **ADJUSTMENT RESPONSIBILITIES**

In addition to the responsibilities of Customer set forth in this Schedule, Customer also agrees to undertake the responsibilities set forth in the Adjustment Schedule as necessary.

## **ADJUSTMENT SCHEDULE**

Below is the procedure for accounting for non-routine adjustments for any of the utility meters included in Schedule D. A non-routine adjustment is required for any change outside of those explicitly defined in Schedule D that will impact the energy use or the verified savings under this Contract. It is Customer's responsibility to notify ESCO of any changes that may necessitate a non-routine baseline adjustment and to perform the required non-routine baseline adjustment steps identified below at Customer's sole expense.

## **CUSTOMER REQUIRED NON-ROUTINE BASELINE ADJUSTMENT RESPONSIBILITIES**

If the required non-routine baseline adjustment steps are not performed, and the change is greater than the threshold limit, savings will be determined with the Assumed Savings Procedure Adjustment, as defined below. Actual Savings will be determined using the Assumed Savings Procedure Adjustment for all billing periods until the required non-routine baseline adjustment steps have been completed, or until the change which necessitated the non-routine baseline adjustment is no longer in place. If Customer fails to notify ESCO of a change necessitating a non-routine baseline adjustment or fails to provide details of the change, savings will be determined with the Assumed Savings Procedure Adjustment.

If the required non-routine baseline adjustment steps are not performed, and the change is less than the threshold limit, savings will be determined with the "Estimated Savings Procedure Adjustment". Actual Savings will be determined using the Estimated Savings Procedure Adjustment for all billing periods until the required non-routine baseline adjustment steps have been completed, or until the change which necessitated the non-routine baseline adjustment is no longer in place.

### **1. Addition of New Building or New Energy User**

- All utility services to the building or energy user which affect the energy use of any meter included in Schedule D must be sub-metered at Customer's expense.
- Threshold limit: the lesser of 10% of the area served by any affected meter, as defined in Schedule D or 20,000 ft<sup>2</sup>.

### **2. Addition to Existing Building**

- All utility services to the addition which affect the energy use of any meter included in Schedule D must be sub-metered at Customer's expense.
- Threshold limit: the lesser of 10% of the area served by any affected meter, as defined in Schedule D or 20,000 ft<sup>2</sup>.

### **3. Renovation / Modification to Existing Building or Utility Service**

- All utility services for the affected portion of the building must be sub-metered before and after the change until the effect on the energy consumption has been determined at Customer's expense.
- Threshold limit: the lesser of 10% of the area served by any affected meter, as defined in Schedule D or 20,000 ft<sup>2</sup>.

### **4. Demolition / Abandonment of Existing Building or Utility Service**

- All utility services for the affected buildings must be sub-metered before and after the change until the effect on the energy consumption has been determined at Customer's expense.
- Threshold limit: the lesser of 10% of the area served by any affected meter, as defined in Schedule D or 20,000 ft<sup>2</sup>.

## 5. Re-commissioning of Out of Service Building

- All utility services for the affected buildings must be sub-metered before and after the change until the effect on the energy consumption has been determined at Customer's expense.
- Threshold limit: the lesser of 10% of the area served by any affected meter, as defined in Schedule D or 20,000 ft<sup>2</sup>.

## 6. Change in Occupancy

- Customer must perform, or cause to be performed, at Customer's expense, a calibrated computer simulation to account for the change. If the impact computed by the simulation is greater than 20% of the projected savings on the meter, the "Assumed Savings Procedure" listed below will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
- Threshold limit: 5% of the total occupant count in the base year.

## 7. Change in Schedule

- Customer must perform, or cause to be performed, at Customer's expense, a calibrated computer simulation to account for the change. If the impact computed by the simulation is greater than 20% of the projected savings on the meter, the Assumed Savings Procedure will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
- Threshold limit: 5% of the total scheduled hours for the meter as defined in Schedule D.

## 8. Change in Set-points

- Customer must perform, or cause to be performed, at Customer's expense, a calibrated computer simulation to account for the change. If the impact computed by the simulation is greater than 20% of the projected savings on the meter, the Assumed Savings Procedure will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
- Threshold limit: An average of 0.5° from the set-points defined in Schedule D.

## 9. Change in Operational Calendar

- Customer must perform, or cause to be performed, at Customer's expense, a calibrated computer simulation to account for the change. If the impact computed by the simulation is greater than 20% of the projected savings on the meter, the Assumed Savings Procedure will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
- Threshold limit: 5% of the total scheduled hours for the meter as defined in Schedule D.

## 10. Change in Plug Load

- Customer must perform, or cause to be performed, at Customer's expense, a simulation of energy impact to account for the change. If the computed impact is greater than 20% of the projected savings on the meter, the Assumed Savings Procedure will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
- Threshold limit: 1% of the base year peak 15-minute average kW for the affected meter.

## 11. Customer Initiated ECMS

- Customer must develop and execute an M&V plan at Customer's expense, which has been reviewed and approved by ESCO, to evaluate the impact of the change. If the impact determined by the M&V plan is greater than 20% of the projected savings on the meter, the Assumed Savings Procedure will be followed. In no event will the adjusted savings be reported as less than the savings achieved in the preceding project year.
- Threshold limit: 2% of the projected savings on any affected meter.

## 12. Missing Bills

- Customer is required to provide ESCO with utility bills for meters defined in Schedule D within ten (10)

days of receipt of each bill or provide ESCO direct access to retrieve the utility bills electronically. If utility bills are not received by ESCO within sixty (60) days of the end of the service date, the Assumed Savings Procedure will be used.

#### **13. Failure to Operate ECMs According to Operational and Design Intent**

- Customer agrees to operate the ECMs according to the Operational and Design Intent of the ECMs. Failure to do so will necessitate a baseline adjustment using the Assumed Savings Procedure.

#### **14. Failure to Perform Project Specific Customer Responsibilities**

- Customer agrees to perform the project specific Customer responsibilities as defined in Schedule E. Failure to do so will necessitate a baseline adjustment using the Assumed Savings Procedure.

#### **15. Other Causes**

- Any change that impacts the energy use on the meters defined in Schedule D that does not fit into any of the other categories may still require a non-routine baseline adjustment. Customer will notify ESCO before any change is made so that an agreeable adjustment strategy can be determined. If no agreeable adjustment method can be reached, the Assumed Savings Procedure will be used.

### **ASSUMED SAVINGS PROCEDURE ADJUSTMENT**

- If the Actual Savings for the affected meter(s) in the prior Guarantee Year are greater than or equal to the projected savings for the affected meter(s), the Actual Savings from the prior Guarantee Year will be reported while savings are assumed for the affected meter(s).
- If the Actual Savings for the affected meter(s) in the prior Guarantee Year are less than the projected savings for the affected meter(s) and there have been less than twenty-four (24) months since the commencement of the Performance Period, Actual Savings will be reported at the projected savings level while savings are assumed for the affected meter(s).
- If the Actual Savings for the affected meter(s) in the prior Guarantee Year are less than the projected savings for the affected meter(s) and there have been twenty-four (24) months or more since the commencement of the Performance Period, Actual Savings will be reported as the average of the achieved savings over the two (2) most recent Guarantee Year plus half (1/2) of the difference between the projected savings and the average of the achieved savings over the two (2) most recent Guarantee Years.
  - If pursuant to the Assumed Savings Procedure, ESCO makes improvements to the Project beyond the original scope as defined in Schedule A., which results in an increase in the Actual Savings, an M&V plan accounting for those improvements will be executed and the resulting savings will be added to the Actual Savings.

### **ESTIMATED SAVINGS PROCEDURE ADJUSTMENT**

- At ESCO'S sole discretion, ESCO will estimate the impact of the change using computerized building simulations, manual calculations, or other generally accepted estimating procedures and may ignore any changes which fall below the threshold limit.

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