

CONTRACT

THIS CONTRACT made and entered into this 9th day of April, 2024, by and between CITY OF LAWTON, Oklahoma, a Municipal Corporation, acting by and through the Mayor and City Council, party of the first part, hereinafter referred to as "CITY", and Horseshoe Construction, Inc., party of the second part, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, the CITY has caused to be prepared in accordance with law, certain Contract Documents and Technical Specifications (including Plans) for the work hereinafter described, and has caused a Solicitation for Bids to be given and advertised as required by law, and has received sealed proposals for the furnishing of all labor and materials for

SUB-BASIN 104 -PU1306, 105-PU1410, & 106-PU1414
City of Lawton Project # PU1306, PU1410, PU1414
CWSRF Project # ORF-24-0050-CW

and

WHEREAS, the Contractor in response to said Solicitation for Bids submitted to the CITY in the manner and at the time specified a sealed proposal in accordance with the terms and provisions of said Contract Documents and Technical Specifications, Plans and Addenda(s) associated with this project; and

WHEREAS, the CITY, in the manner provided by law, has publicly opened, examined, and canvassed all the proposals submitted and has determined and declared the above-named Contractor to be the best responsive bidder on the above described project; and

WHEREAS, the City, has duly awarded this Contract to said Contractor at the contract unit prices bid and as specified in the Contractor's proposal, to wit:

Four million three hundred seventy-one thousand twenty dollars and no cents Dollars (\$4,371,020.00).

Said proposal of Horseshoe Construction, Inc. is incorporated by reference into this contract. The actual amount to be paid to the Contractor will be based on the unit price in the Contractor's proposal times the unit quantities actually used and accepted for this project.

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

1. The Contractor shall, in a good and first-class workmanlike manner, at his own cost and expense, furnish all labor and materials, tools, and equipment required to perform and complete said work in strict accordance with this Contract, the Contract Documents and Technical Specifications and all applicable Addenda, all of which are on file in the office of the Project Manager, 2100 SW 6th Street, Lawton, OK, 73501, and hereby incorporated by reference and made a part of this Contract as if the same were each herein set out at length.

2. The Contractor hereby represents and warrants to and for the benefit of the Owner that: The Contractor has reviewed and understands the Davis Bacon Act and prevailing wage rate requirements and will provide any further verified information, certification or assurance of compliance as may be required by the Owner.

3. The Contractor hereby represents and warrants to and for the benefit of the Owner and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the State.

4. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Owner). While the Contractor has no direct contractual privity with the State, as a lender to the Owner for the funding of its project, the Owner and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

5. The CITY will make progress payments to the Contractor no more than once per month upon request of the Contractor.

Such payment will be made on the basis of an agreed estimate of work performed since the previous pay request, provided that the Contractor and the Project Manager shall have previously come to an agreement as to the amount of the request prior to submission.

The City shall retain five percent (5%) of the amount of each estimate until the project is complete. This retainage shall not be released until final acceptance of project by the City Council.

Each monthly estimate for payment must contain or have attached an affidavit for payment, as set forth in the Contract Documents and Technical Specifications.

On completion of the work, but prior to the acceptance by the CITY, it shall be the duty of the City Engineer/Project Manager, or his authorized designee, to determine that said work has been completed and fully performed in accordance with said Contract Documents and Technical Specifications and all applicable Addenda; and upon making such determination said official shall make his final certificate to the CITY.

The Contractor hereby agrees to commence work under the Contract on a date specified in a written "Notice to Proceed" of the Owner, and to complete the following project milestones within the calendar days indicated in the following table.

Project Milestones

Milestone #	Description	Calendar Days
1	All Work will be substantially complete within 220 calendar days after the date when the Contract Times commence to run in accordance with the General and Supplementary Conditions.	Two Hundred Twenty (220)
2	All Work will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 250 calendar days after the Contract Times commence to run.	Two Hundred Fifty (250)

The Contractor agrees to complete each milestone to a level of substantial completion, as defined by the General Conditions, within **the calendar days indicated in the above table**. The CONTRACTOR further agrees to pay as liquidated damages, for each milestone, the sum of **One Thousand Dollars and 00/100 (\$1,000.00) for each consecutive calendar day** thereafter as hereinafter provided in the General Conditions. Additionally, the CONTRACTOR agrees to fully complete the project, securing the ENGINEER's recommendation of final payment as described by the General Conditions, within **two hundred fifty (250) consecutive calendar days**. The CONTRACTOR further agrees to pay as additional liquidated damages the sum of **Five Hundred Dollars and 00/100 (\$500.00) for each consecutive calendar day** thereafter. The liquidated damages for exceeding each project milestone and final completion milestone shall be additive.

The Contractor shall furnish proof that all claims and obligations incurred by him in connection with the performance of said work have been fully paid and settled; said information shall be in the form of an affidavit constituting the Contractor's Release to City as set forth in the Contract Documents and Technical Specifications; thereupon, the final estimate (including any retained amounts) will be approved and paid.

6. Discrimination. The Contractor agrees in connection with the performance of work under this contract as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, disability, age or ancestry. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, (including apprenticeship.) The Contractor agrees to include this non-discrimination clause in any subcontracts connected with the performance of this Contract.

- b. The Contractor and Subcontractor shall agree to post in a conspicuous place available to employees and applicants for employment, notice to be provided by the City Clerk of the City of Lawton setting forth the provisions of this section.
- c. In the event of the Contractor's non-compliance with the above non-discrimination clause, this Contract may be terminated by the CITY. The Contractor may also be declared by the CITY to be ineligible for future contracts with the CITY until satisfactory proof of intent to comply shall be made by the Contractor.

7. Use of Subcontractors. The Contractor shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. At the request of the CITY, the Contractor shall furnish evidence of compliance with this requirement of minority solicitation. The Contractor further agrees to consider the grant of subcontracts to minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses.

8. Entire Contract. This Contract and all the documents incorporated by reference contain the entire understanding and agreement of the parties upon the subject matter hereof. There is no agreement, oral or otherwise, which is not set forth in writing hereto or attached. This Contract includes the following items: this Contract, the Contract Documents and Technical Specifications, all applicable Addenda and the Contractor's Proposal.

9. Modification and Termination. This Contract cannot be modified or terminated except in writing signed by both parties or as otherwise provided herein.

10. Assignment. This Contract shall not be assigned without the written consent of the CITY.

11. Bankruptcy. If the Contractor becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against the Contractor, or if a receiver is appointed for the Contractor, the CITY shall have the right to terminate this Contract upon written notice to the Contractor without prejudice to any claim for damages or any other right of the CITY under this Contract to the time of such termination.

12. Variables in Cost. The parties hereto assume and understand that the variables in Contractor's cost of performance may fluctuate; consequently, the parties hereto agree that any fluctuations in Contractor's costs will in no way alter the Contractor's obligations under this Contract nor excuse performance or delay on his part.

13. Choice of Laws and Venue. This Contract shall be governed by the laws of the State of Oklahoma. Any lawsuit brought concerning this Contract shall be filed with the appropriate state court, Comanche County, Oklahoma or with the United States District Court for Western District of Oklahoma, as applicable.

14. This Contract requires proper signature and acceptance by the Contractor and approval by the Lawton City Council before it becomes effective.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, in three (3) originals, the day and year first above written.

(FOR CORPORATIONS ONLY)

Horseshoe Construction, Inc.

Name of Corporation

By James R. Holt

Title James R. Holt, President

ATTEST:

Chad Wall

Title Chad Wall, Estimator

(AFFIX SEAL)

(FOR PARTNERSHIPS AND PROPRIETORSHIPS)

Name of Partnership or Proprietorship

By _____

Title _____

COUNTY OF COMANCHE }
STATE OF OKLAHOMA }

Before me the undersigned, a Notary Public in and for said state, on this ____ day of _____, 2024, personally appeared _____, a member of the partnership/proprietorship _____ to me known to be the identical person who executed the within and foregoing instrument on behalf of said partnership/proprietorship and acknowledged to me that _____ (he/she) executed the same as _____ (his/her) free and voluntary act and deed, and for the free and voluntary act and deed of said partnership/proprietorship, for the uses and purposes therein set forth.

My Commission Expires _____

Notary Public

CITY OF LAWTON, OKLAHOMA
A Municipal Corporation

Stan Booker, MAYOR

ATTEST:

Donalynn Blazek-Scherler, CITY CLERK

APPROVED as to form and legality this ____ day of _____, 2024.

Tim Wilson, CITY ATTORNEY

I, Joe Dunham, Finance Director of the City of Lawton, Oklahoma, do hereby certify that I have entered the amount for this encumbrance against appropriate Account No. _____ for _____ (\$), and after charging account title **Sub-Basin 104, 105, 106 Rehabilitation Project PU1306, PU1410, PU1414** with this encumbrance there is an unencumbered balance in said account of \$ _____.

Dated this ____ day of _____, 2024.

Joe Dunham, FINANCE DIRECTOR