



P.O. Box 1960 • Edmond, Oklahoma 73083-1960  
2701 West I-35 Frontage Road • Edmond, Oklahoma 73013  
Telephone # (405) 359-2500 • Fax # (405) 359-1071 • www.ompacom  
*"Building a brighter future"*

# PRO-FORMA CONTRACT

for

## Inlet Fogging System

*The Oklahoma Municipal Power Authority is a governmental agency of the state of Oklahoma and as such is subject to the Oklahoma Open Meetings Act, 25 O.S. §§ 301, et seq., and the Oklahoma Open Records Act, 51 O.S. §§ 24.A.1, et seq.*

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This Contract, entered into on [DATE] between the Oklahoma Municipal Power Authority ("OMPA"), a state governmental agency of the State of Oklahoma, and [CONTRACTOR NAME] ("Contractor"), [CONTRACTOR ADDRESS], together, the "Parties."

In consideration of the mutual terms, covenants, and conditions set forth below, the Parties agree as follows:

1. RECITALS.

1.1 Bid Description. OMPA has called for bids for:

Contract Title: Inlet Fogging System

(the "Work"). The Parties agree that the Project must be completed in accordance with the following terms and conditions, plans and technical specifications, blueprints, drawings and any addenda made a part of this Contract.

1.2 Entire Agreement. This Contract constitutes the entire agreement between the parties and supersedes any oral or written representations, understandings, proposals, or communications previously entered into by or on account of the parties regarding this subject matter. In the event of any conflict between this contract document and any of the attachments hereto, the terms and provisions of this contract document will control, followed by the OMPA Request for Proposal, followed by the Contractor's Bid Proposal.

1.3 Contractor's Initial Representations. By executing this Contract, Contractor represents that Contractor:

- (a) has carefully examined the Site and has informed itself of the facilities for delivery and placement of all equipment and materials;
- (b) has carefully evaluated the local economy, available labor, weather, and other conditions which will influence its productivity in performing the Project;
- (c) is fully aware of all conditions that exist or difficulties that may be encountered arising from or related to the execution of the Project;
- (d) warrants that the specified times for completion of the Project are reasonable times for its completion;
- (e) will complete the Project within the specified times; and
- (f) must fulfill all of the requirements in the Contract without claiming any additional compensation.

1.4. **Definitions.** OMPA and Contractor agree that the following definitions will be applicable to this Contract:

**Base Warranty Period:** the period commencing with the Completion of Project and ending one (1) year thereafter.

**Bid Proposal:** the proposal submitted by Contractor related to the Project.

**Certificate of Contract Completion:** the certificate issued by OMPA to Contractor stating that the Project has been completed according to the terms and conditions of the Contract.

**Completion of the Project:** the date when OMPA issues the Certificate of Contract Completion stating that the Project has been completed and is ready for acceptance under the terms and conditions contained therein.

**Contract Documents:** (1) this Contract together with all Attachments (2) all plans and drawings submitted in association with the Project, and (3) any other document(s) related to this Contract to which both Parties have agreed in writing.

**Contract Term:** the date and time for performance as set forth in the Contract Documents. Contractor the party entering into this Contract for the performance of the required work.

**Contractor's Representative:** the person authorized to represent Contractor in connection with the Project. That person is [name].

**Designated OMPA Representative:** the person authorized to represent OMPA in connection with the Project. That person is [name - see specifications for OMPA Construction Coordinator/Inspector, Project Manager, and Project Engineer].

**OMPA:** the Oklahoma Municipal Power Authority, an agency of the state of Oklahoma, created pursuant to 11 O.S. §§ 24-101, *et seq.*

**Request for Proposal:** all documents published by OMPA to potential bidders related to the Project, including instructions to bidders, technical specifications, and a pro-forma contract.

**Schedule for Contract Work:** the schedule for the completion of all Contract Work is more particularly described by the Specifications and Contract Documents.

**Site:** [Site location], where the Project is to be performed, as more particularly described by the Contract Documents.

**Specifications:** collectively, all of the terms and stipulations contained in this Contract and in each of the specifications appended thereto.

**Subcontractor:** a person, firm, or corporation to whom any part of the Project has been sublet by or supplied to Contractor.

**Surety Company:** the person, firm, or corporation which issues the surety bonds required by Article 5.

**Work:** as set forth in Article 1.1, the services to be performed, necessary for the fulfillment of this Contract.

2. SCOPE OF WORK. The scope of work to be performed by Contractor is more particularly described in the Request for Proposal.

3. CONTRACT PRICE, ACCEPTANCE, FINAL PAYMENT, ALTERATIONS, AND CHANGE ORDERS.

3.1 Contract Price. The Contract Price as contained in Contractor's Bid will be a lump sum price of [number] Dollars (\$[number]).

3.2 Partial Payments.

- a) Upon completion of a task, Contractor may submit, to the Designated OMPA Representative, an invoice requesting payment of the portion of the Contract Price associated with the completion of a specific task that qualifies for partial payment, as indicated in Contractor's Bid Proposal. Upon receipt of this invoice, the Designated OMPA Representative will, in his or her sole discretion, evaluate Contractor's invoice, documentation, and performance and determine whether the invoice, documentation, and performance is sufficient to demonstrate that the task has been completed.
- b) If the Designated OMPA Representative approves an invoice, OMPA will pay the invoice within forty-five (45) days from the date on which it was received. Up to five percent (5%) of each partial payment will be withheld as retainage, unless such retainage is waived by OMPA, in OMPA's sole discretion.
- c) All invoices must be completed, executed, and notarized by Contractor, using the Invoice Affidavit form attached to this Contract. OMPA will approve no more than one invoice per month.

3.3 Final Payment.

- a) Upon completion of the Project, Contractor will submit a fully completed Certificate of Contract Completion form to the Designated OMPA Representative. Contractor must submit evidence satisfactory to OMPA that all material bills, sums due to subcontractors, and all other indebtedness, liabilities and/or obligations of any type whatsoever arising from or related to the Project have been fully paid.
- b) Upon receipt of the Certificate of Contract Completion and all supporting documentation, OMPA will inspect the Project. If OMPA determines, in OMPA's sole discretion, that any portion of the Project has not been completed in accordance

with the Specifications or is otherwise defective, Contractor will, at its expense, complete the Project in accordance with the Contract Documents.

- c) If OMPA determines, in OMPA's sole discretion, that the Project has been fully completed in accordance with each of the terms of the Contract Documents, OMPA will execute the Certificate of Contract Completion submitted by the Contractor. All submittals, operating manuals, brochures, as-built drawings, keys related to the Project, warranties, excess materials provided by or billed to OMPA, and all other requirements of the Contract Documents must be submitted to OMPA before final payment is made.
- d) Upon receipt of the fully executed Certificate of Contract Completion form from OMPA, Contractor will invoice OMPA for the remaining balance due to Contractor from OMPA, including any applicable retainage amounts. All invoices must be completed, executed, and notarized by Contractor, using the Invoice Affidavit form attached to this Contract. After receipt and approval of Contractor's invoice, OMPA will deliver payment to Contractor within forty-five (45) days from the date on which the invoice was approved by OMPA. No interest or penalty will be charged by Contractor for late payment until forty-five (45) days after OMPA's rec of a completed and substantiated invoice. The maximum interest or penalty charged by Contractor may not exceed the maximum interest rate permissible under Oklahoma law.

3.4 No OMPA Waiver by Approval. OMPA's approval of the Certificate of Contract Completion will not of itself constitute an approval or acceptance of any faulty work or defective materials, whether latent or patent, nor will any payment, whether partial payment or final payment by OMPA, or release of retainage, constitute a waiver and/or acceptance of any defective or faulty workmanship or materials.

3.5 No Additional Compensation Authorized. Contractor will not be entitled to any claim for additional compensation related to the performance of additional work beyond the scope of the original contract unless the claim for additional compensation is approved and authorized in writing by the Designated OMPA Representative before the commencement of the additional work, and complies with the change order process as described in Article 3.6.

3.6 Change Orders. The following procedure will apply to additional work beyond the original scope of the Contract:

- a) If change is needed to the scope of the Project, and the Designated OMPA Representative has approved the change, the Designated OMPA Representative and Contractor will complete applicable portions of the Change Order Request form attached to this Contract. The Change Order Request will fully describe the revised scope of work, explaining completely what each item entails and the cost or credit, and additional time, if any, involved. Contractor will provide a detailed breakdown of cost, showing quantities and sizes of materials, unit cost, labor, equipment, profit and overhead, and other expense items. Contractor will not be entitled to a Change

Order for any task described in the Contract Documents or listed within an itemized table of tasks included in the Contract.

- b) Before any change order is binding, it must be approved by the OMPA Board of Directors or their designee, and the reasons for approval must be recorded in the permanent records of OMPA.
- c) Change orders or addenda to contracts of One Million Dollars (\$1,000,000.00) or less will not exceed a fifteen percent (15%) cumulative increase in the original contract amount.
- d) Change orders or addenda to contracts of over One Million Dollars (\$1,000,000.00) will not exceed the greater of One Hundred Fifty Thousand Dollars (\$150,000.00) or a ten percent (10%) cumulative increase in the original contract amount.
- e) A change order, or change orders for which the cumulative change order total would exceed the limits stated in 3.6(c) or 3.6(d), may be approved only upon good cause shown, not to include any occurrence or event that (x) merely increases the costs of the subject of the Contract or causes economic hardship to the Contractor, (y) is caused by or contributed to by the Contractor, or (z) constitutes a delay caused by failure of the Contractor to fulfill Contractor's obligations.
- f) If the change order is not approved, the OMPA shall readvertise and rebid the remaining Work on the Contract. If Contractor is not awarded the contract for the readvertised project, the Contractor shall demobilize from the work site within 30 days of receipt of a Notice of Termination of the Contract from OMPA. The Contractor shall not remove any OMPA-supplied materials or equipment from the Site. Any Contractor-owned equipment, materials, debris, or trash remaining on the Site after 30 days shall become the property of OMPA. Any trash or debris that must be removed by OMPA will be charged to the Contractor and the cost deducted from any final payment made to the Contractor.

#### 4. CONTRACTOR'S OBLIGATIONS.

4.1 Written Work Authorization Required. Contractor will not commence performing the Project unless Contractor receives written authorization from the Designated OMPA Representative.

4.2 Quality of Labor and Materials. Contractor will provide all supervision, materials, labor, tools, equipment, and other facilities necessary to complete the Work that OMPA did not specifically agree to provide. All materials furnished by Contractor must be new, unless otherwise specified. The Designated OMPA Representative may require Contractor to furnish satisfactory evidence of the kind and quality of materials used in the Project, and the Designated OMPA Representative may approve or reject them in his or her sole discretion. Contractor will diligently complete the Project in accordance with good industry practices and in a workmanlike manner, will furnish highly trained and experienced supervision, personnel, materials, and equipment, and

will use such methods, appliances, supervision and inspection for the completion of the Project as will assure satisfactory quality conforming to the provisions of this Contract.

4.3 Compliance with Drawings and Specifications. Contractor will complete the Project in strict accordance with all Contract drawings and specifications. If Contractor proposes to deviate from the drawings or specifications, Contractor must have approval in writing from the Designated OMPA Representative before commencing the work. The Project must be completed to the satisfaction of the Designated OMPA Representative, who will, in all cases, determine the amount, quality acceptability, and fitness of all work arising from or related to the completion of the Project. The decision of the Designated OMPA Representative will be final and conclusive.

4.4 Permits, Standards, and Compliance. Contractor will obtain all applicable permits, certificates and licenses, and Contractor agrees to fully comply with such permits. Where not otherwise specified, all materials and installation will meet the latest standard requirements of applicable specifications of the American National Standards Institute, Inc. (ANSI), the Institute of Electrical and Electronics Engineers (IEEE), American Concrete Institute (ACI), American Society for Testing and Materials (ASTM), the National Electrical Manufacturers Association (NEMA), and manufacturer's specifications relating to stress, clearances, pressure and precision measurements, all as provided in manufacturer's plans and drawings for assembly and disassembly of equipment.

4.5 Timely Completion. Contractor will, in a good and workmanlike manner, perform and complete the Project as required by this Contract, within the time specified for each separate task associated with the Project, in accordance with the provisions of the Contract Documents.

4.6 Field Measurements and Examination. Contractor will take field measurements and verify field conditions, and will carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities. If Contractor discovers errors, inconsistencies or omissions between the field measurements and conditions and the Contract Documents, Contractor will report them to the Designated OMPA Representative immediately, provided, no such report will relieve Contractor of Contractor's obligations under this Contract.

4.7 Liquidated Damages. If Contractor fails to complete the Project on or before the date specified in the Contract, Contractor must pay to OMPA Five Hundred Dollars (\$500.00), not as a penalty, but as liquidated damages for each calendar day beyond the required Project completion date, until the Certificate of Project Completion has been fully executed. The liquidated damages are fixed and agreed upon by the Parties because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages OMPA would sustain in such event. The liquidated damages do not limit the damages that OMPA may recover for any other cause of action arising from or related to this Contract.

4.8 TIME IS OF THE ESSENCE FOR EACH AND EVERY PORTION OF THIS CONTRACT.



4.9 Personnel Risk Assessment. At least fifteen (15) days prior to any on-site activity, Contractor will provide a completed Personnel Risk Assessment form for each of Contractor's employees, agents, or representatives (including subcontractors and any employees of subcontractors) who will perform work on Site so that OMPA may complete a background check for each such individual. Only those persons successfully completing the Personnel Risk Assessment and approved by the Designated OMPA Representative may enter onto the Site. Contractor, at no additional cost to OMPA, will immediately remove or cause to be removed from the Site any personnel considered by OMPA to be incompetent or unfit, whenever requested to do so by OMPA. Such person may not again be employed at the Site. Contractor, at Contractor's expense, will provide a replacement for any personnel removed.

## 5. BONDS AND INSURANCE.

5.1 Bonds Provided by Contractor. Contractor will furnish a surety bond or bonds, or an irrevocable letter of credit, in the amount of 100% of the total Contract price prior to the execution of this Contract. Such bonds or irrevocable letter of credit will be valid until the end of the Base Warranty Period as defined in Article 1.4 of the Contract, and will be a guarantee to OMPA of the following:

- a) That all material liens, subcontractor liens, and/or any other legal encumbrances arising from or related to this Contract are fully paid and satisfied; and
- b) Proper and prompt completion of the Project in accordance with the provisions of the Contract Documents; and
- c) Proper and prompt correction of any defects of workmanship or materials during the warranty period.

5.2 Form of Bonds. All bonds will be in a form approved by OMPA with terms acceptable to OMPA. All bond submittals will contain all terms and conditions that are applicable to the bonds. The bonds will have as surety thereon a surety company authorized and registered to do business in Oklahoma and listed in Federal Circular 570. The Federal Circular may be found at <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/e570 a-z.htm>.

5.3 Insurance. Contractor, at its own expense, will carry, with reliable insurance companies that are acceptable to OMPA, the following types of insurance with limits not less than shown in the respective amounts:

- a) Commercial General Liability Insurance. Contractor will maintain for the duration of this Agreement a commercial general liability insurance policy covering all work and operations by or on behalf of Contractor, including but not limited to coverage for bodily injury, wrongful death, personal injury, property damage, premises and/or operations hazards, products and completed operations, and contractual liability insuring the obligations assumed by Contractor in this Agreement. The commercial general liability insurance policy cannot exclude the perils of

explosion, collapse, and underground hazards. The commercial general liability insurance policy will be written on an occurrence basis. The limits of liability will be not less than [number] Million Dollars (\$[x],000,000) per occurrence and [number] Million Dollars (\$[x],000,000) aggregate. If defense costs are included in the limits of liability, then the required limits of liability referenced above will each be increased by One Million Dollars (\$1,000,000). If the commercial general liability insurance policy utilizes a general aggregate limit, then the general aggregate limit will apply separately to the work and operations for the Project performed by or on behalf of Contractor, or alternatively Contractor may obtain separate insurance to provide the required limits which will not be subject to depletion because of claims arising out of any other project or activity of Contractor.

OMPA, its officers, directors, employees, representatives and agents will be expressly named as additional insureds on the commercial general liability insurance policy with respect to liability arising out of work and operations performed by or on behalf of Contractor. The commercial general liability insurance policy will stipulate that the insurance afforded to the additional insureds will apply on a primary and non-contributory basis and that any other insurance carried by the additional insureds will be excess only and will not contribute with this insurance.

- b) Automobile Liability Insurance. Contractor will maintain for the duration of this Agreement an automobile liability insurance policy insuring against claims for bodily injury and property damage and covering liability arising out of all motor vehicles, including owned, leased/hired, and non-owned motor vehicles. The limit of liability will not be less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damages. The automobile liability insurance policy will be written on an occurrence basis.
- c) Workers' Compensation and Employer's Liability Insurance. For the duration of this Agreement, Contractor will provide workers' compensation insurance sufficient to meet its obligations under the laws of the State of Oklahoma. Further, Contractor will provide employer liability insurance covering its legal obligation to pay damages because of bodily injury or occupational disease (including resulting death) sustained by an employee. The employer liability insurance will contain a liability limit of no less than One Hundred Thousand Dollars (\$100,000) per accident for bodily injury or disease.
- d) Excess/Umbrella Insurance. Contractor will provide Excess/Umbrella insurance coverage of not less than Two Million Dollars (\$2,000,000) to follow form on the employer's liability, general liability and auto insurance described in this Article.

5.4 Waiver of Subrogation. Contractor grants to OMPA a waiver of Contractor's rights to subrogation against OMPA. Further, Contractor grants to OMPA a waiver of all rights to subrogation which any insurer of Contractor may acquire against the OMPA by virtue of the

payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. Contractor understands and acknowledges that this waiver of subrogation provision applies regardless of whether Contractor has received a waiver of subrogation endorsement from its insurer.

5.5 Certificates of Insurance. Contractor must mail a certificate of all such insurance to the Legal Department, Oklahoma Municipal Power Authority, P.O. Box 1960, Edmond, OK 73083-1960. The certificate(s) must show the name and address of the insured, particular work covered, limits of coverage, policy number, effective and expiration dates and cancellation requirements. If Contractor changes insurers during Contractor's performance of this Contract, Contractor will ensure that there are no lapses in coverage, and will notify OMPA prior to any modification to the above described policies. In the event that Contractor fails to maintain insurance as provided by this paragraph, Contractor is in default under this Contract.

## 6. CONTRACT TERM AND TERMINATION.

6.1 Term. The period of performance under this Contract will be as provided in the specifications and Contractor's Bid Proposal from the effective date of this Contract unless sooner terminated as provided for herein.

6.2 Termination for Convenience. OMPA may terminate this Contract for any reason upon thirty (30) days prior written notice to Contractor. If OMPA terminates the Contract under this paragraph, OMPA will pay Contractor the portion of the Contract amount reflecting the amount of work successfully completed and approved by OMPA at the time of termination. All termination charges will be due and payable thirty (30) days from the date of receipt of Contractor's final invoice, which will be delivered to OMPA no more than thirty (30) days after OMPA delivers Contractor such notice of termination.

6.3 Termination for Cause. If (i) Contractor's work on the Project is delayed for a period in excess of ninety (90) days due to a force majeure condition; or (ii) Contractor fails, at any time during the performance of the Project, to provide the necessary crews, tools, and equipment for the performance of the Project, or fails to perform any of its obligations described in the Contract, or (iii) fails to conform to any applicable safety statutes, rules, regulations, or generally accepted safety practices, and in any of the causes, fails to substantially cure the non-conforming action within five (5) days of receiving notice, OMPA may, at its election, and without prejudice to other remedies it may have, either: (i) cancel this Contract in its entirety and pay to Contractor a portion of the Contract amount reflecting the amount of work successfully completed and approved by OMPA prior to the time of cancellation; or (ii) utilize another contractor to perform any portion of the work at the expense of Contractor. OMPA's remedies in the event of termination for cause, as described in this paragraph, will not be construed as a waiver of any other rights or remedies available to OMPA under applicable law.

6.4 Release upon Termination. Upon termination of the Contract by OMPA, OMPA will be released from further liability to Contractor or Surety Company. If Contractor cannot be located, the payment for any amount owed to Contractor for work performed will be held by OMPA for

the Contractor for Thirty-Six (36) months, at which time payment will be deemed waived by the Contractor and OMPA will be released from any further liability to Contractor or Surety Company.

6.5 Suspension of Project. Contractor may not suspend performance of any part of the Project except as directed and authorized by OMPA. OMPA may, at any time and in its sole discretion, suspend performance of all or part of the Project, as follows:

- a) OMPA will notify Contractor about any Project suspension, and identify the scope and effective date of the suspension. Contractor will suspend performance of the Project in accordance with OMPA's notice, but will continue to perform the portion of the Project not suspended. Upon receipt of OMPA's notice, Contractor will protect and preserve items committed to or purchased for the suspended portion of the Project, and will take commercially reasonable steps to minimize the financial consequences of the suspension.
- b) If the suspension is unrelated to Contractor's failure to comply with this Contract, OMPA will adjust the schedule to reflect the reasonable delay due to the suspension and will reimburse Contractor for the reasonable and direct additional costs incurred by Contractor due solely to the safeguarding or storage of Project materials in accordance with OMPA's instructions. Provided, the aggregate sum of such costs may not exceed the Change Order limits listed in Article 3.6. This schedule adjustment and reimbursement will be Contractor's sole and exclusive remedies for an OMPA-directed suspension.
- c) Contractor will promptly resume performance of the suspended portion of the Project when so directed by OMPA. Contractor must present all claims for schedule adjustment and/or reimbursement, including any supporting materials, within ten calendar days after OMPA instructs Contractor to resume the suspended Project, or Contractor will have waived such claims.

6.6 Obligations Surviving Termination. Contractor's contractual obligations pertaining to warranty, indemnification, confidentiality, insurance, choice of law, jurisdiction, and audit rights will survive termination.

## 7. SUBCONTRACTING.

7.1 No Subcontractors without OMPA Consent. Except as provided in Contractor's Bid Proposal, Contractor will not subcontract any portion of the Project without first obtaining OMPA's written consent. OMPA's approval of a Subcontractor does not constitute a waiver of any of OMPA's rights arising under or related to this Contract.

7.2 Subcontractors Bound by Contractual Requirements. Each Subcontractor (and each subcontractor of a Subcontractor) will be bound by, and must comply with, each of the requirements in this Contract.

7.3 Contractor Remains Liable for Subcontractor Performance, Payment, and Management. Contractor will be fully and principally liable for all of the acts and omissions of its subcontractors. Nothing in this Contract will be construed to create any contractual relationship between OMPA and any Subcontractor, nor any obligation on the part of OMPA to pay or to see to the payment of any money due any subcontractor of Contractor, except as may be otherwise required by law. Contractor will directly manage each of its Subcontractors in the performance of the Project.

7.4 Subcontractor Inspection. Contractor will inspect and promptly report to OMPA any defects associated with any such subcontracted work that would render it unsuitable for proper performance under this Contract.

7.5 Contractor's Prompt Payment of Subcontractors. Contractor will promptly pay the Subcontractors the amounts to which they are entitled. Upon OMPA's request, Contractor shall provide OMPA written evidence that Contractor has properly paid each Subcontractors. If Contractor fails to furnish such evidence, then: (i) OMPA may contact any Subcontractor to determine whether the subcontractor has been properly paid; (ii) OMPA may suspend all payments under the Contract; and (iii) Contractor will be in default of this Contract.

7.6 OMPA Payment of Subcontractors. OMPA has no obligation to pay Subcontractors or ensure that the Subcontractors are properly paid by Contractor. If OMPA determines that a Subcontractor has not received payment for its portion of the work, then OMPA may, at OMPA's sole discretion, directly pay the Subcontractor the amount that it is owed and may deduct that amount from any future payment to Contractor, or issue a separate invoice to Contractor for the amount paid to the subcontractor, plus a reasonable administrative fee.

## 8. INDEMNITY AND LIABILITY.

8.1 Tort Claims Liability. The Parties intend that each will be responsible for its own acts or omissions to act. OMPA will be responsible for any damages or injuries caused by the acts or omissions to act of its officers and employees while acting within the scope of their employment according to the Governmental Tort Claims Act, Title 51 O.S. §§ 151, *et seq.* Contractor will be responsible for any damages or injuries caused by the acts or omissions to act of its officers, employees, or agents. Contractor agrees to hold harmless OMPA of any claims, demands and liabilities resulting from any act or omission on the part of Contractor and/or its officers, employees, or agents arising from or related to the performance of the Contract. OMPA does not waive any rights or protections it has under any applicable law.

8.2 No Partnership or Joint Venture. This agreement will not be construed as, nor given the effect of, creating a joint venture, partnership, affiliation, or association that would otherwise render the Parties liable as partners, agents, or employer-employee or otherwise create any joint and several liability.

8.3 No Special Damages. To the fullest extent allowed by applicable law, in no event will OMPA be liable for any special, indirect, or consequential damages including, without limitation, damages, or losses in the nature of increased Project costs, loss of revenue or profit, lost production, or governmental fines or penalties.

8.4 Contractor Representation and Knowledge. Contractor is, or has the opportunity to be, adequately represented by counsel. Contractor has taken all steps to fully inform itself of the current status of Oklahoma law on the issue of limitation of liability, indemnification, and OMPA.

## 9. WARRANTIES.

9.1 General Warranty. Contractor warrants that the Project, including all equipment and work to be provided, will conform to all specifications which are part of the Contract Documents, will be free of defects in workmanship or material, and will be designed for the purposes stated in the Contract Documents for a Base Warranty Period of one (1) year commencing from the date of the fully executed Certificate of Contract Completion.

9.2 Warranty Claims and Corrections. If OMPA discovers any failure to conform to the foregoing warranties within one (1) year after completion of installation, and OMPA gives Contractor written notice within thirty (30) days after the expiration of such warranty period, then Contractor will promptly correct such nonconformity at Contractor's sole cost and expense.

9.3 Warranty on Corrected Claims. The warranty on the repaired or replaced equipment, or the correction of defective workmanship will be for one (1) year commencing from the date of repair, replacement and/or rework.

9.4 OMPA's Correction of Warranty Claims. If Contractor fails to correct any defective or non-conforming portion of the Project within a reasonable time, OMPA may, upon written notice to Contractor, proceed to accomplish the redesign, repair, rework or replacement of the non-conforming portion of the Project in OMPA's discretion, and charge Contractor for all costs arising from or related to such redesign, repair, rework, or replacement. This cost may include labor, materials, and other direct costs. OMPA may, at OMPA's discretion, separately invoice or deduct from payments otherwise due to Contractor the costs as provided herein. OMPA's right to charge Contractor these costs is in addition to any and all other rights and remedies available to OMPA.

## 10. FORCE MAJEURE.

10.1 Force Majeure Excuses Delay. Contractor will not be liable for failure to perform any obligation or for delay in performance resulting from any cause beyond the control of Contractor or its suppliers if such cause was not reasonably foreseeable, or from any act of God; act of civil or military authority; declared act of war; insurrection or riot; sabotage; terrorist activities; fire; earthquake; flood; embargo; declared national fuel or energy shortage; or unpreventable delay or accident in shipping or transportation. Force Majeure may not be claimed due to economic factors, including, but not limited to, changes in the cost of materials or labor, tariffs, taxes, or governmental regulations.

10.2 Mandatory Procedures for Claiming Force Majeure. If Contractor claims Force Majeure, Contractor must immediately notify OMPA in writing regarding the Force Majeure event, the anticipated duration of delay, and Contractor's strategy to mitigate the delay. OMPA will approve or deny the Force Majeure claim using its reasonable discretion. If such a claim is approved, the

date of delivery or time for completion of the Project will be extended by a period of time reasonably necessary to overcome the effect of the delay. Provided, Contractor will not receive any additional compensation for a Force Majeure event.

11. Title and Risk of Loss. Title to all materials and Work furnished by the Contractor hereunder will pass to OMPA, free and clear of any liens, encumbrances, qualifications, or defects of any nature, upon Contractor's receipt of payment as provided in Article 3. Contractor will retain all liability for, and risk of loss or injury to all materials and Work to be furnished by Contractor until final approval and acceptance of complete performance of this Contract.

12. No Assignment. Contractor will not assign or otherwise transfer any Work under this Contract without the prior written consent of OMPA. Even if agreed to by OMPA, any assignment by Contractor will not relieve Contractor of its obligations under this Contract.

13. Amendment. This Contract may be amended only by a written instrument signed by both Contractor and OMPA.

14. OMPA Not Liable for Taxes. The prices herein are inclusive of all costs, including any applicable taxes. OMPA will have no liability to Contractor to pay taxes incurred by Contractor.

## 15. INTELLECTUAL PROPERTY

15.1 Intellectual Property Indemnification. Contractor will, at its own expense, defend, indemnify, and hold harmless OMPA from and against any claim that any equipment, work, material, or process furnished and/or used by Contractor arising from or related to the Project constitutes an infringement of any patent, copyright, trade secret, or other intellectual property. If OMPA receives notice of any such claim, OMPA will promptly notify Contractor in writing, and will provide other information that is reasonably necessary in order for Contractor to defend such claim. Contractor will notify OMPA regarding Contractor's choice of intended legal counsel to defend the claim. Legal counsel must be approved in advance by OMPA. In case the equipment, work, material, or process, as a result of any suit or proceeding so defended, is held to constitute infringement of any patent, copyright, or trade secret, or its use by OMPA is enjoined, Contractor will, at its option and its own expense, either (i) procure for OMPA the right to continue using the equipment, work, material, or process; or (ii) replace the equipment, work, material, or process with a substantially equivalent non-infringing equipment, work, material, or process, subject to pre-approval by OMPA; or (iii) modify the equipment, work, material, or process so it becomes non-infringing, subject to pre-approval by OMPA.

15.2 License. Contractor hereby grants to OMPA a nonexclusive, royalty-free license to use any of Contractor's intellectual property used in the performance of the Project, including, but not limited to, the design and construction related documents, blueprints, drawings, and computer programs including, but not limited to, machine readable object code, flow charts, logic diagrams, listings, and any listing generated therefrom (referred to herein as the "Software"), for use by OMPA in operating or in connection with the equipment. Any Software updates will also be covered by the provisions of this Agreement.

## 16. COMPLIANCE WITH LAWS.

16.1 Contractor's Compliance with Laws. In the performance of any work under this Contract, Contractor and its subcontractors will comply with all applicable provisions and requirements of the Civil Rights Act of 1991 and any amendments thereto, the Fair Labor Standards Act of 1938 and amendments thereto, the Occupational Safety and Health Act of 1970, and all other federal, state, and local laws, including but not limited to environmental laws. The Contract Price, as contained in Contractor's Bid Proposal, is based on full compliance by Contractor with these laws and requirements. If Contractor or any subcontractor fails to comply with such laws, regulations, or enactments, and Contractor is assessed a fine, penalty, cost, charge, and/or expense due to the noncompliance, Contractor will fully pay any such fine, penalty, cost, charge, or expense, and hold OMPA harmless regarding the same. In the event that any such fine, penalty, cost, charge, and/or expense is assessed against OMPA, Contractor will indemnify OMPA as provided paragraph 8.1.

16.2 Status Verification System. The Contractor certifies that it and all proposed subcontractors, whether known or unknown at the time this Contract is executed or awarded, are in compliance with 25 O.S. § 1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. § 1312 and includes, but is not limited to the free Employee Verification Program (E-Verify) available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).

17. Access to Work and Right of Inspection by OMPA. OMPA will have reasonable access to the areas where the work under this Contract is being performed to enable OMPA to observe the work. Contractor, if requested, will inform OMPA of those tests and procedures which can be witnessed, whether performed at Contractor's facilities or at the Site, and the schedule for those test and procedures. If OMPA wishes to witness a test or procedure, OMPA will notify Contractor of its interest. No rescheduling of tests or delays in manufacturing or shipment will be made to accommodate OMPA's attendance to witness a test or procedure. Contractor will exercise reasonable efforts to secure similar rights with respect to the inspection of the work at Contractor's premises or elsewhere.

## 18. ACCOUNTING AND AUDIT RIGHTS.

18.1 Statements, Books, and Records. Contractor agrees to furnish OMPA, in such form as will be reasonably satisfactory to OMPA, such detailed statements pertaining to the cost of material and labor as may be necessary for OMPA to comply with the requirements of its internal purchasing and accounting policies or any governmental regulatory authority having jurisdiction over OMPA. In determining the amount of compensation payable to Contractor, Contractor will, during the period of performance of work invoiced on a time and material basis, maintain books, records, documents, and other supporting data relating to the amounts invoiced.

18.2 Record Retention and Audits. Contractor will, at all times during the term of this Contract and for a period of seven (7) years after the completion of this Contract, maintain and make available for inspection and audit by OMPA and/or the Oklahoma State Auditor, all books, supporting documents, accounting procedures, practices, and all other items relevant to the Contract.



19. Waivers. The failure of either party to enforce, at any time, any of the provisions of this Contract or to require, at any time, performance by the other party of any of such provisions, will in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Contract, or any parts thereof, or the right of either party thereafter to enforce each and every provision.

## 20. ENVIRONMENTAL COMPLIANCE.

20.1 Hazardous Waste. Contractor recognizes that the performance of the work at the Site may involve the generation of hazardous waste as such term is defined in the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), the laws of the state of Oklahoma, and the applicable rules or regulations. OMPA will designate an area for hazardous waste storage at the Site where waste containers are to be placed by Contractor. Contractor will, at its expense, furnish containers appropriate for hazardous waste storage and be responsible for the transportation and disposal of such waste. Contractor agrees to store, transport, and dispose of such hazardous waste in accordance with all applicable federal, state, and local laws, rules, regulations, and ordinances. OMPA must pre-approve any waste contractor and disposal facility proposed to be utilized by Contractor prior to the waste leaving the Site. Contractor will employ procedures to minimize the generation of hazardous waste during the performance of the Project. If Contractor generates, stores, transports, or disposes of any hazardous waste, Contractor will provide OMPA with written documentation identifying the type and quantity of all hazardous waste generated, stored, transported, and/or disposed during the performance of the Contract.

20.2 Non-Hazardous Waste. Contractor further recognizes that the performance of the work at the Site may involve the generation of non-hazardous waste as such term is defined in the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), the laws of the state of Oklahoma, and the applicable rules or regulations. OMPA will designate an area for non-hazardous waste storage at the Site where waste containers are to be placed by Contractor. Contractor will, at its expense, furnish containers appropriate for non-hazardous waste storage and be responsible for the transportation and disposal of such waste. Contractor agrees to store, transport, and dispose of such non-hazardous waste in accordance with all applicable federal, state, and local laws, rules, regulations, and ordinances. OMPA must pre-approve any waste contractor and disposal facility proposed to be utilized by Contractor prior to the waste leaving the Site. Contractor will employ procedures to minimize the generation of non-hazardous waste during the performance of its work hereunder.

20.3 Contractor agrees to indemnify OMPA for any fines, fees, penalties, or other liabilities related to any charges or claims made against OMPA as a result of Contractor's generation, storage, transportation, or disposal of hazardous or non-hazardous waste in performance of the Contract.

## 21. CONFIDENTIALITY.

21.1 Contractor Confidentiality. Contractor agrees to accept and hold drawings, specifications, identified computer software, materials, and information furnished by OMPA in complete confidence, and further agrees not to divulge such to any third party or use the same for its own

benefit. Contractor agrees to return all originals and copies of such data and all ancillary information derived therefrom to OMPA promptly upon OMPA's request, or termination of this Contract, whichever occurs first.

21.2 OMPA Confidentiality. Contractor understands and acknowledges that OMPA is a governmental agency of the state of Oklahoma and is subject to the Oklahoma Open Records Act, 51 O.S. §§ 24A.1, *et seq.*, and the Oklahoma Open Meetings Act, 25 O.S. §§ 301, *et seq.* To the extent permitted by applicable law, OMPA will not disclose (except to officers, employees, and contractors of OMPA) information which is specifically designated in writing by Contractor as being proprietary and confidential. General statements (including generally applicable headers or footers) stating that all information is proprietary and confidential are insufficient to confer confidential status on information Contractor seeks to designate as confidential or proprietary. The provisions of this paragraph will not apply to information, notwithstanding any confidential designation thereof, which (a) is previously known to OMPA without any restriction as to disclosure or use at the time it is furnished, (b) is or becomes generally available to the public without breach of any agreement, (c) is independently developed by OMPA, or (d) is received from a third party without limitation or restriction on the third party or OMPA at the time of disclosure. Contractor understands and acknowledges that OMPA's duties under the Oklahoma Open Records Act, 51 O.S. § 24A.1, *et seq.*, and/or other law applicable to governmental entities may require OMPA to disclose information which has been designated by Contractor as proprietary and confidential. If OMPA receives a request to disclose information which has been designated by Contractor to be confidential or proprietary, before disclosing the information, OMPA will provide Contractor with advance notice of the information requested and OMPA's intent to disclose.

22. Jurisdiction and Applicable Law. This Contract will be interpreted and construed in accordance with the laws of the State of Oklahoma. The Parties agree that jurisdiction and venue for any disputes will be in a court of competent jurisdiction located in Oklahoma County, Oklahoma.

23. Notices. Except as otherwise provided, all notices required or permitted to be given will be in writing and will be deemed properly given when delivered in person to the other party to be notified or when mailed by registered or certified United States mail, postage prepaid to the proper individual(s), or when sent by email to the party to be notified at its address set forth below, or such other address as the party to be notified may have previously designated by written notice to the other:

Designated OMPA Representative:

Contractor: