

**OKLAHOMA DEPARTMENT OF TRANSPORTATION
CONTRACT FOR EXCAVATING AND GRADING
AGENCY CONTRACT 23-7-0032B**

PARTIES TO THE CONTRACT

This contract is made and entered into by and between the Oklahoma Department of Transportation, hereinafter referred to as the “DEPARTMENT” and Gladiator Construction Services, LLC, hereinafter referred to as the “CONTRACTOR”).

SECTION 1. PURPOSE OF THE CONTRACT

This contract is to provide excavation equipment and an operator to perform work in conjunction with DEPARTMENT maintenance forces on highway right-of-way within the geographical boundaries of Field District VII, which consists of Caddo, Carter, Comanche, Cotton, Grady, Jefferson, Love, Murry, and Stephen Counties.

SECTION 2. SPECIFICATIONS

This work shall be in accordance with the response submitted by the CONTRACTOR on July 21, 2022 to the DEPARTMENT.

SECTION 3. TERM OF CONTRACT

This contract is for a twelve (12) month period, commencing upon the execution of this contract between the DEPARTMENT and the CONTRACTOR. Upon mutual agreement by the DEPARTMENT and CONTRACTOR, this contract may be renewed for three (3) consecutive one-year periods, at the same terms and conditions. The DEPARTMENT has approved a Fuel Surcharge option (See Attachment 2).

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 for RFP# 3450004991. All actions, duties, and obligations required by the CONTRACTOR apply to the CONTRACTOR’S agents and employees. All legal protections offered to the State of Oklahoma shall also be extended to the Oklahoma Department of Transportation and any other state entity involved with this contract

SECTION 4. COMPENSATION

4.1) The DEPARTMENT agrees to pay, and the CONTRACTOR agrees to accept, in full consideration for the performance of the CONTRACTOR’S obligations, compensation based on the CONTRACTOR’S bid (Solicitation # 3450004991) for the various pay items (See Attachment 1).

Total compensation for services rendered under this contract will be a maximum not to exceed amount of **FIFTY THOUSAND DOLLARS (\$50,000.00)**.

4.2) Bills for fees or other compensation for services and expenses shall be submitted to DEPARTMENT in detail sufficient for a proper pre-audit and post-audit thereof. Billing shall be submitted to the address listed on the Purchase Order issued as a result of the contract.

Each invoice shall include the following information on each project:

- Location where work was performed
- Employer Identification Number
- Vendor's name, remit to address, telephone number, date of invoice

4.3) If payment is made more than 45 days after submitting a proper invoice, the CONTRACTOR may be entitled to claim interest in the maximum amount permitted by law, until the invoice is paid in full.

SECTION 5. TRAVEL

No reimbursable travel is contemplated under the terms of the contract.

SECTION 6. DISPUTE RESOLUTION

Any dispute concerning the question of fact in connection with the work, not disposed of by the contract between the parties hereto, shall be referred to the state agency that initially awarded this contract (e.g., Department of Central Services). The decision of the administrator of said agency, or his/her duly authorized representatives, shall be final and conclusive on the parties to this contract.

SECTION 7. TERMINATION

This Contract may be terminated, without recourse, in the following circumstances:

7.1) For Convenience - The DEPARTMENT or CONTRACTOR may terminate this Contract by giving thirty (30) days written notice.

7.2) For Cause - The DEPARTMENT may, by written notice to the CONTRACTOR, terminate this Contract for any of the following reasons:

7.2.1) The CONTRACTOR discontinues providing services as required by the Contract.

7.2.2) The CONTRACTOR takes any action pertaining to this Contract without the approval of the DEPARTMENT and which, under the conditions set by this Contract, would have required the approval of the DEPARTMENT.

7.2.3) The commencement, execution or timely completion by the CONTRACTOR is, for any reason, rendered improbable, impossible, or illegal.

7.2.4) The CONTRACTOR shall be in default under any provision of this Contract.

7.3) Mutual Agreement - By mutual agreement and consent of the parties hereto this Contract may be terminated upon sixty (60) days written notification.

Should this Contract be terminated for any of the reasons specified above, the DEPARTMENT shall be liable to the CONTRACTOR, or CONTRACTOR's successors in interest, only for the reasonable value of services and work satisfactorily performed, up to and including the date of notice of termination.

SECTION 8. GOVERNING RULES AND REGULATIONS

The CONTRACTOR and its subcontractor's if any, shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any nature affecting the performance of this Contract, including worker's compensation laws, minimum and maximum salary and wage statutes and regulations. When required, the CONTRACTOR shall furnish the DEPARTMENT with satisfactory proof of its compliance therewith.

SECTION 9. COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person specifically to solicit or secure this Contract, and that it has not paid or agreed to pay any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty the DEPARTMENT shall have the right to annul this Contract without liability, or at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

SECTION 10. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Contract, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. The CONSULTANT shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT further agrees to insert a similar revision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

SECTION 11. TITLE VI - CIVIL RIGHTS ACT OF 1964

The CONTRACTOR shall comply with all the requirements imposed by Title VI of the Civil

Rights Act of 1964 (P.L. 88-352), the Regulations of Department of Transportation issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the CONTRACTOR pursuant thereto.

During the performance of this Contact, the CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

(a) Compliance with Regulations: The CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (hereinafter, "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

(b) Nondiscrimination: The CONTRACTOR, with regards to the work performed by it during this Contract, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited in Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for Subcontracts: In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontract, if such subcontracting is approved by the DEPARTMENT, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR'S obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.

(d) Information and Reports: The CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DEPARTMENT to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required or a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the DEPARTMENT, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance: In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of this Contract, the DEPARTMENT shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

(1) Withholding of payments to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or,

(2) Cancellation, termination or suspension of the Contract, in whole or in part.

(f) Incorporation of Provisions: The CONTRACTOR shall include the provisions of Paragraph (a) through (f) of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as the DEPARTMENT may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the DEPARTMENT to enter into such litigation to protect the interest of the DEPARTMENT.

SECTION 12. BINDING EFFECT

This Contract shall be binding upon and inure to the benefit of the DEPARTMENT and the CONTRACTOR and shall be binding upon their successors and assigns subject to the limitations of Oklahoma law.

SECTION 13. HOLD HARMLESS CLAUSE

The CONTRACTOR shall indemnify and save harmless the DEPARTMENT, their respective officers, employees and agents from all claims, suits, or actions of every kind and character made upon or brought against the DEPARTMENT, their respective officers, employees and agents, for or on account of any injuries or damages received or sustained by any party or parties by or from acts of said CONTRACTOR or its servants, agents and subcontractors, in doing the work and rendered the services Contracted for, or by or consequence of any negligence in operations or any improper material or equipment used, or by or on account of any act or omission of said CONTRACTOR or his or its servants, agents and subcontractors. This hold harmless and indemnity obligation shall include attorney's fees, court costs and all other expenses incurred in the investigation and defense of any claim or suit.

SECTION 14. PRIOR UNDERSTANDINGS

This contract incorporates and reduces to writing all prior understandings, promises, agreements, commitments, covenants, or conditions, and constitutes the full and complete understanding and contractual relationship of the parties.

SECTION 15. INSURANCE/LICENSES

CONTRACTOR shall maintain at all times during the term of this contract, with an insurance carrier reasonably acceptable to the DEPARTMENT and authorized to conduct business in the State of Oklahoma, insurance coverage as set forth in this Article:

1) Workers' Compensation Insurance as required by the statutes of the State of Oklahoma, and adequate (but in no event less than \$100,000) Employer's Liability Insurance.

2) Public Liability and Property Damage Insurance covering all operations and activities hereunder in the following minimum limits (but in no event less than the statutory limits found at 51 Oklahoma Statutes, Section 151 et. seq. or successor or amendatory statutes):

- a) Bodily Injury Liability in the amount of not less than \$100,000 for injuries, including accidental death and products liability, to any one person, and subject to the same limit for each person, in an amount not less than \$1,000,000 for one occurrence.
- b) Property Damage Liability in the amount of not less than \$100,000 for any one accident including products liability and an aggregate limit of \$1,000,000 per occurrence.
- c) Combined aggregate liability coverage shall not be less than \$2,000,000 (two million) for bodily injury, death, and property damage.

3) A Comprehensive Business Auto policy with a minimum limit of not less than One Million Dollar (\$1,000,000) combined single limit for bodily injury and property damage, providing coverage for at least any and all leased, owned, hired or non-owned vehicles used in any of CONTRACTOR's activities pursuant to this agreement, with any self-insured retention not exceeding One Hundred Thousand Dollars (\$100,000). Any and all mobile equipment which is not covered under this Comprehensive Business Auto policy shall have said coverage provided for under the Comprehensive General Liability policy.

CONTRACTOR shall furnish the DEPARTMENT with a certificate evidencing the existence of all such insurance coverage; and the certificates evidencing the existence of the insurance coverage specified in these specifications. Said insurance coverage shall provide that the DEPARTMENT are additional named insured under said policy or policies and that said policy or policies cannot be canceled or materially modified except upon thirty (30) days advance written notice to the DEPARTMENT. The foregoing provision regarding additional named insured shall not create or be deemed to create any liability on the part of said additional named insured which would not otherwise exist under the laws of the State of Oklahoma.

SECTION 16. AMENDMENTS OR MODIFICATION OF CONTRACT

No changes, revisions, amendments or alterations in the manner, scope, or type of work or compensation to be paid by the DEPARTMENT shall be effective unless reduced to writing and executed by the parties with the same formalities as are observed in the execution of this contract.

SECTION 17. GOVERNING LAW AND VENUE

Any claims, disputes or litigation relating to the solicitation, execution, interpretation, performance or enforcement of this Contract shall be governed by the laws of the State of Oklahoma and the applicable rules, regulations, policies, and procedures of the Oklahoma Transportation Commission. Venue for any action, claim, dispute or litigation, mediation or arbitration shall be in Oklahoma County, Oklahoma.

SECTION 18. RECORDS

The CONTRACTOR and any subcontractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this contract, and shall make all such materials available to the DEPARTMENT or any of its duly authorized representatives and the State Auditor and Inspector at any reasonable time during the term of work on the contract, and for seven (7) years from date of final payment to the CONTRACTOR by DEPARTMENT for work performed hereunder.

SECTION 19. HEADINGS

Article headings used in the contract are inserted for convenience of reference only and shall not be deemed a part of this contract for any purpose.

SECTION 20. ASSIGNMENT

The CONTRACTOR shall NOT sublet, sell, transfer, assign, or otherwise dispose of the contract or contracts or any portion thereof, or of his right, title, or interest therein, without written consent of the DEPARTMENT. In case such consent is given, the CONTRACTOR will be permitted to sublet a portion thereof, but shall perform with his own organization, work amounting to not less than 50% of the total contract cost. Request for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by a statement showing that the organization which will be performing the work is particularly experienced and equipped for such work. No sub-contracts, or transfer of contract, shall in any case release the CONTRACTOR of his liability under the contract and bonds.

SECTION 21. NOTICES

All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either party to the other pursuant to the Contract shall be in writing and shall be deemed to have been properly given or sent:

- (a) if intended for the DEPARTMENT, by mailing by first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid, addressed to DEPARTMENT as:

Oklahoma Department of Transportation
Attn: District VII Headquarters
P. O. Box 460
Duncan, OK 73534

- (b) if intended for CONTRACTOR, by mailing by first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid, to an address supplied by the CONTRACTOR upon award of this Contract.

Gladiator Construction Services, LLC
Attn: Chris Moery, Chief Operating Officer
17549 E. 650 Road
Hennessey, OK 73742

SECTION 22. SEVERABILITY

If any provision, clause, or paragraph of this contract or any document incorporated by reference shall be determined invalid by a court of competent jurisdiction, such determination shall not affect the other provisions, clauses, or paragraphs of this contract which are not affected by the determination. The provisions, clauses, or paragraphs and any documents incorporated by reference are declared severable.

SECTION 23. PAYMENT OF CLAIMS

The CONTRACTOR shall pay all just claims due for the payment of all employees and mechanics for labor that shall be performed, for the payment of all material and equipment rental which is actually used or rented in the performance of the contract.

SECTION 24. BREACH OF CONTRACT

Failure to perform any and all of the terms and conditions of this contract shall be deemed a substantial breach thereof and give the DEPARTMENT cause to cancel this contract on seven (7) days written notice to the CONTRACTOR. The DEPARTMENT then reserves the right to re-award the contract to the next lowest responsible available bidder -OR- should this contract be awarded to multiple vendors, the DEPARTMENT may utilize those vendors. In the event of cancellation of this contract, the CONTRACTOR shall not be entitled to damages and agrees not to sue the DEPARTMENT for damages thereof. After notice of cancellation, the CONTRACTOR agrees to perform the terms and conditions of this contract up to and including date of cancellation, as though no cancellation had been made and notwithstanding other legal remedies which may be available to the DEPARTMENT because of the cancellation, agrees to indemnify the DEPARTMENT for its costs in procuring the services of a new CONTRACTOR.

SECTION 25. COUNTERPARTS


This Contract may be executed in counterparts, including by means of facsimile or electronic signature pages, any of which need not contain the signature of more than one party and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This contract is awarded pursuant to Oklahoma Statute, Title 74, Chapter 4, Section 85.12.B.3.

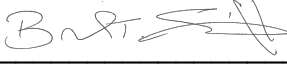
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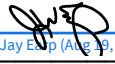
IN WITNESS WHEREOF: This Contract is executed by the CONTRACTOR on the Seventeenth day of August, 2022; and the DEPARTMENT on the 22nd day of August, 2022.

CONTRACTOR:
Gladiator Construction Services, LLC


Chris Moery (Aug 17, 2022 10:16 CDT) 08/17/2022
Authorized Signature Date

Recommend for Approval:


Procurement Division 08/17/2022
Date



Jay Esp (Aug 19, 2022 12:14 CDT) 08/19/2022
District VII District Engineer Date

Approved as to Form and Legality:

David Allen Wiley
General Counsel 08/19/2022
Date

For Department:


Shawn Davis (Aug 22, 2022 12:39 CDT) 08/22/2022
Office of System and Field Operations Date


Chief Engineer 08/22/2022
Date

STATUTORY CERTIFICATE

Title 74 Okla. Stat. §85.22

I, Chris Moery, of lawful age, states the following:

1. That I am the agent authorized by the Contractor to submit the attached contract to the State of Oklahoma. I am fully aware of the facts and circumstances surrounding the making of the contract to which this statement is attached and have been personally and directly involved in the procurement of that contract.

2. That the Contractor has not paid, given, or donated or agreed to pay, give, or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract.

3. That no person who has been involved in any manner in the development of this Agreement while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under this contract.

4. That, to the best of my knowledge and belief, the Contractor has not previously entered into a contract with the Oklahoma Department of Transportation or any other agency of the State of Oklahoma which would result in a substantial duplication of the services required by this contract.

5. That the Contractor has registered and fully participates in the Status Verification System, as required by Title 25 O.S. § 1313(B)(1), to verify the work eligibility status of all new employees of the Contractor.

FURTHER AFFIANT SAYETH NOT.


Chris Moery (Aug 17, 2022 10:16 CDT)

Chris Moery

ATTACHMENT 1

Pay Item 1: Trackhoe with Bucket: Unit Cost \$124.50

Pay Item 2: Emergency Mobilization Response: Unit Cost \$825.00

Pay Item 3: Fuel Surcharge: Refer to ATTACHMENT 2

Fuel Surcharge Schedule

Based on D.O.E. National Weekly Average

The Diesel Fuel Cost Rate Scale shown below will be used to determine adjustments to freight charges for line haul transportation. The scale is based upon the Department of Energy (DOE) National Average Price for self-serve diesel fuel index reported each Monday and will be the basis for calculation of rebates or surcharges applied to Carrier freight charges. Revisions to this fuel adjustment scale will occur the day after the DOE posts its weekly fuel index. The National Average Price can be verified by contacting the Energy Information Fuel Hot Line at (202) 586-6966.

Shipment will be subject to a \$.010 per mile rate adjustment for each \$.059 per gallon increase or decrease above or below the base price as stated in the following schedule. The adjustment will be applied on the per gallon cost of diesel fuel as reported weekly by the DOE. In applying these provisions, determine the line haul miles for transportation and assess rebate or surcharge as indicated below. Fractions will be rounded to the nearest whole cent.

DOE WEEKLY AVERAGE				SURCHARGE	
DIESEL FUEL \$/GALLON				RATE/MILE FUEL ADJUSTMENT	
\$	(0.000)	-	\$	0.059	-0.17
\$	0.060	-	\$	0.119	-0.16
\$	0.120	-	\$	0.179	-0.15
\$	0.180	-	\$	0.239	-0.14
\$	0.240	-	\$	0.299	-0.13
\$	0.300	-	\$	0.359	-0.12
\$	0.360	-	\$	0.419	-0.11
\$	0.420	-	\$	0.479	-0.10
\$	0.480	-	\$	0.539	-0.09
\$	0.540	-	\$	0.599	-0.08
\$	0.600	-	\$	0.659	-0.07
\$	0.660	-	\$	0.719	-0.06
\$	0.720	-	\$	0.779	-0.05
\$	0.780	-	\$	0.839	-0.04
\$	0.840	-	\$	0.899	-0.03
\$	0.900	-	\$	0.959	-0.02
\$	0.960	-	\$	1.019	-0.01
\$	1.020	-	\$	1.079	0.00
\$	1.080	-	\$	1.139	0.01
\$	1.140	-	\$	1.199	0.02
\$	1.200	-	\$	1.259	0.03
\$	1.260	-	\$	1.319	0.04
\$	1.320	-	\$	1.379	0.05
\$	1.380	-	\$	1.439	0.06
\$	1.440	-	\$	1.499	0.07
\$	1.500	-	\$	1.559	0.08
\$	1.560	-	\$	1.619	0.09
\$	1.620	-	\$	1.679	0.10
\$	1.680	-	\$	1.739	0.11
\$	1.740	-	\$	1.799	0.12
\$	1.800	-	\$	1.859	0.13
\$	1.860	-	\$	1.919	0.14
\$	1.920	-	\$	1.979	0.15
\$	1.980	-	\$	2.039	0.16
\$	2.040	-	\$	2.099	0.17
\$	2.100	-	\$	2.159	0.18
\$	2.160	-	\$	2.219	0.19
\$	2.220	-	\$	2.279	0.20
\$	2.280	-	\$	2.339	0.21

DOE WEEKLY AVERAGE DIESEL FUEL \$/GALLON				SURCHARGE RATE/MILE FUEL ADJUSTMENT	
\$	2.340	-	\$	2.399	0.22
\$	2.400	-	\$	2.459	0.23
\$	2.460	-	\$	2.519	0.24
\$	2.520	-	\$	2.579	0.25
\$	2.580	-	\$	2.639	0.26
\$	2.640	-	\$	2.699	0.27
\$	2.700	-	\$	2.759	0.28
\$	2.760	-	\$	2.819	0.29
\$	2.820	-	\$	2.879	0.30
\$	2.880	-	\$	2.939	0.31
\$	2.940	-	\$	2.999	0.32
\$	3.000	-	\$	3.059	0.33
\$	3.060	-	\$	3.119	0.34
\$	3.120	-	\$	3.179	0.35
\$	3.180	-	\$	3.239	0.36
\$	3.240	-	\$	3.299	0.37
\$	3.300	-	\$	3.359	0.38
\$	3.360	-	\$	3.419	0.39
\$	3.420	-	\$	3.479	0.40
\$	3.480	-	\$	3.539	0.41
\$	3.540	-	\$	3.599	0.42
\$	3.600	-	\$	3.659	0.43
\$	3.660	-	\$	3.719	0.44
\$	3.720	-	\$	3.779	0.45
\$	3.780	-	\$	3.839	0.46
\$	3.840	-	\$	3.899	0.47
\$	3.900	-	\$	3.959	0.48
\$	3.960	-	\$	4.019	0.49
\$	4.020	-	\$	4.079	0.50
\$	4.080	-	\$	4.139	0.51
\$	4.140	-	\$	4.199	0.52
\$	4.200	-	\$	4.259	0.53
\$	4.260	-	\$	4.319	0.54
\$	4.320	-	\$	4.379	0.55
\$	4.380	-	\$	4.439	0.56
\$	4.440	-	\$	4.499	0.57
\$	4.500	-	\$	4.559	0.58
\$	4.560	-	\$	4.619	0.59
\$	4.620	-	\$	4.679	0.60
\$	4.680	-	\$	4.739	0.61
\$	4.740	-	\$	4.799	0.62
\$	4.800	-	\$	4.859	0.63
\$	4.860	-	\$	4.919	0.64
\$	4.920	-	\$	4.979	0.65
\$	4.980	-	\$	5.039	0.66
\$	5.040	-	\$	5.099	0.67

Note: Adjustments in pricing will be made weekly on Tuesday following the Monday release of the Department of Energy cost computation.