

Securities In Lieu of Retainage Agreement

Project No. MP-0477
Project Description Deep Fork Green Way Trail

This Securities In Lieu of Retainage Agreement (“AGREEMENT”) is by and between the City of Oklahoma City (hereinafter also referred to as the “CITY”) Wynn Construction Co., Inc. (hereinafter also referred to as the “CONTRACTOR”)

WITNESSETH:

WHEREAS, the CITY and CONTRACTOR entered a contract (“CONTRACT”) for the construction of the above-referenced project (“Project”); and

WHEREAS, said CONTRACT incorporates the Contract Documents and Oklahoma law, and authorizes the CITY to retain a certain percentage of progressive payments based upon estimates of the work performed under said CONTRACT until the CONTRACT has been completed by the CITY, and

WHEREAS, Section 113.2 of the Oklahoma Public Competitive Bidding Act of 1974 authorizes the CONTRACTOR may, from time to time, withdraw any part, or the whole, of the amount which has been retained from partial payments to the CONTRACTOR pursuant to the terms of CONTRACT, upon depositing with or delivery to the awarding public agency, or other appropriate public official designated in the contract document: (1) United States Treasury bonds, United States Treasury notes, United States Treasury bills, or (2) general obligation bonds of the State of Oklahoma, or (3) certificates of deposit from a state or national bank having its principal office in the State of Oklahoma (collectively called “Securities”); and

WHEREAS, Section 113.2 further provides that no retained amount shall be withdrawn which would represent an amount in excess of the market value of the Securities at the time of deposit or of the par value of such Securities, whichever is lower; and

WHEREAS, Section 113.2 further provides that at the time of deposit of any Securities, the Securities must be endorsed, if necessary, and shall be accompanied by a conditional assignment to the City of Oklahoma City, which will empower the CITY, or other authorized designee to have custody of the Securities and withdraw funds from the Securities, to negotiate the same at any time to the extent necessary to cause the construction contract to be fulfilled; and

WHEREAS, Section 113.2 further provides that the Securities provided by the contractor shall remain on deposit in a state or national bank in the state of Oklahoma until the completion of the contract and observance by the parties to the contract of any other statutory obligations relative thereto; and

WHEREAS, the release of Securities in lieu of retainage will require authorization from the CITY and/or City Treasurer after the contractor has satisfactorily demonstrated completion of the construction contract; and

WHEREAS, upon timely completion and acceptance of the project, the Securities remaining, after any authorized withdrawal by CITY, shall be released to the contractor; and

WHEREAS, although the Securities are pledged by the contractor and the awarding public agency or other public agency is designated as “owner” in the contract documents to fulfill the requirements of Section 113.2 of the Oklahoma Competitive Bidding Act, CITY and the City have no responsibility or liability of safekeeping related to these funds given the contractor selected the provider(s) of the Securities and any responsibility, liability of safekeeping or replacement of lost funds is solely between the contractor and its selected Securities provider(s); and

WHEREAS, the contractor shall, regardless of any contingency of whatsoever nature, indemnify CITY and the City for all reasonable expenses, costs, and obligations incurred by CITY under the provisions of the Securities application and related forms to the end that CITY and the City will not suffer any out-of-pocket expenses or contractual losses; and

WHEREAS CITY has need to establish a process for receiving Securities in lieu of retainage, authorizing the payment of retainage not in excess of the value of the Securities, and for endorsing the remaining Securities upon the completion and acceptance of the project; and

WHEREAS, should CITY need to negotiate of such Securities, the Director and/or the Treasurer would negotiate the Securities, on behalf of the CITY, to the extent necessary to cause the construction contract to be fulfilled; and

WHEREAS, upon the timely completion of the Project, the Securities remaining, after any authorized withdrawal by the CITY, shall be released to the CONTRACTOR; and

WHEREAS, the CONTRACTOR is desirous of withdrawing the retainage of each progressive estimate for work performed, however, no retained amount shall be withdrawn which would represent an amount in excess of the cumulative par value of the Securities listed on Attachment “A”.

IT IS HEREBY AGREED BY AND BETWEEN THE CITY AND THE CONTRACTOR AS FOLLOWS:

1. The CONTRACTOR has deposited with the Odyssey Financial Group, (hereinafter referred to as "BANK") certain Securities, a copy of which were delivered to the CITY with this AGREEMENT and a list of which are included on **Attachment "A" – "List of Securities,"** which is incorporated herein by reference.

2. At the time of deposit of any Securities, the Securities must be endorsed and assigned to the City of Oklahoma City as owner or to the other public body designated as "owner" in the contract documents, which will empower the CITY, or other authorized designee, to have custody of the Securities, to negotiate same at any time to the extent necessary to cause the construction CONTRACT to be fulfilled. The Securities listed on **Attachment "A"** and the full amount of the principal funds represented thereby shall be held by said BANK.

3. The City of Oklahoma City will be and continue to be the owner of Securities until the completion of the Project and observance by the parties to the CONTRACT of any other statutory obligations relative thereto. Upon completion of any CONTRACT and observance by the parties to the CONTRACT of any other statutory obligations relative thereto, the Securities, if any, which remain shall be assigned and endorsed to the CONTRACTOR.

4. The CONTRACTOR desires to withdraw the retainage of each progressive estimate for the work performed under the CONTRACT, however, no retained amount may be withdrawn, which would represent an amount in excess of market value at the time of deposit or of the par value, whichever is lower, of the Securities listed on **Attachment "A"**.

5. The withdrawal by the CONTRACTOR of retainage held by the CITY, and any substitution by the CONTRACTOR of said Securities for such retainage, shall not in any way amend, change, or abrogate any of the duties or obligations of the CONTRACTOR under the CONTRACT. Notwithstanding the substitution of the retainage of partial payments for the Securities, the CITY shall have and continue to have any and all rights to enforce said CONTRACT and, until completion of the Project, the CITY has the right to ownership of the retainage, and any Securities held in lieu thereof.

6. The CITY shall have the same rights to negotiate and withdraw funds from the Securities to the extent necessary to cause the construction contract to be fulfilled. This right to negotiate the Securities shall be in addition to the rights of the CITY to withdraw and expend funds, if any, held in retainage and any other rights under the CONTRACT or the Project bonds.

8. That upon completion of the CONTRACT, as defined in the CONTRACT, and final acceptance of the Project by formal action of the governing board of the CITY, the CITY, or its authorized designee, shall assign the Securities and all of CITY's remaining rights, title and interest in and to said Securities to the CONTRACTOR, or the CONTRACTOR'S designee, less any previously negotiated, withdrawn or withheld funds to the extent necessary to cause the construction contract to be fulfilled.

9. Additionally, CONTRACTOR shall, regardless of any contingency of whatsoever nature, indemnify the CITY for all reasonable expenses, costs and obligations incurred by the CITY under the provisions of this AGREEMENT to the end that CITY will not suffer any out-of-pocket expenses or contractual losses because of carrying out any of its undertakings herein contained, including by way of illustration and not limitation, any costs, expenses, and losses and any bank fees, penalties, or charges.

10. This AGREEMENT will be effective upon execution by the CITY.

ATTEST:

CONTRACTOR: Wynn Construction Co., Inc.

Tyler Bahner
Secretary

Rick Thompson
By President – Rick Thompson

STATE OF Oklahoma)

) SS.

COUNTY OF Oklahoma)

The foregoing instrument was acknowledged before me this 18 day of October, 2023,
by Rick Thompson as President of Wynn Construction Co.,
Inc., a S-Corp corporation on behalf
of the CONTRACTOR.



Madison Lankford
Notary Public

My Commission Number: 20005835

My Commission Expires: 05-20-24

This AGREEMENT was approved by the City of Oklahoma City this 13TH day of FEBRUARY, 2024.

ATTEST:

THE CITY OF OKLAHOMA CITY:

Amy K. Simpson
City Clerk



David Holt
Mayor

REVIEWED for form and legality.

Craig B Keith
Assistant Municipal Counselor

ATTACHMENT "A"

List of Securities

at Odyssey Financial Group **Bank in Oklahoma City, Oklahoma**

PAR VALUE	DESCRIPTION (Include identification No.)	DATE OF ISSUE	MATURITY DATE	MARKET VALUE
100	912828D56 - QTY 297	12-05-2023	08-15-2024	\$98,108969 \$291,383.64
100	91282CFGI - QTY 500	12-05-2023	08-31-2024	\$98,604938 \$493,024.69
			TOTAL	\$784,408.33

Order Ticket Detail(#11421359)
 UNITED STATES TREASURY NOTES 2.375 08/15/2024

Trade Details		Ticket Details		Description	
Order Number:	11421359	Entry Date:	12/05/2023	Cusip:	912828D56
Status:	EXECUTED	Entry Time:	11:05:49	Debt Type:	TREA
Transaction Type:	Buy	Trade Date:	12/05/2023	Issue:	UNITED STATES TREASURY NOTES
Quantity:	297	Trade Time:	11:06:10	Ratings:	Aaa/
Settle Date:	12/06/2023	Cust Price:	98.108969	Attributes:	
FA Price:	98.108969	Index Factor:	1.000000	Coupon:	2.375
Credit(points):	0.000	Gross Price:	98.108969	Maturity:	08/15/2024
Total Credit(\$):	0.00	Principal:	291,383.64	Premium Call:	
Contra/Alpha:		Accrued Interest:	\$2,165.96	Par Call:	
Account Code:		Fees:	0.00	Prerefunded:	
Comments:		Net Money:	293,549.60	Insurance:	
Acting As:		YTW:	5.183	Dated date:	08/15/2014
FC Private Notes:		YTM:	5.183	Coupon Frequency:	SEMI
		YTC:	N/A	State:	US
				State Restrictions:	

Advisor Name:	Adam Bahner	Advisor Phone #:	4052862339
Trailer:			

Account Number:	48A189306	Firm Account:	0288910262	Misc. Fee:	
Other Fee:		Legend 1:		Legend 2:	
Trailer/Comment 1:		Trailer/Comment 2:		Trailer/Comment 3:	
Account Type:	Cash	Solicited:	Yes	Discretion:	No
Order Capacity:	P	Receipt Date:	12/05/2023	Time (hh:mm:ss) EST:	11:05:12
From:	Adam Bahner	Private Note:		IBD value:	028
Name 1:		%Split IP 1:		Name 2:	
%Split IP 2:		Pershing From:		Pershing Order Date:	
Pershing Time (hh:mm:ss) EST:		Liaison SC:		Type:	
Blmbrg RegRep#:		BBG Book:		TKG RULE STAT:	TKG_EVAL_WITHIN_RANGE

Order Ticket Detail(#11421294)

UNITED STATES TREASURY NOTES 3.250 08/31/2024

Trade Details

Ticket Details

Description

Order Number:	11421294	Entry Date:	12/05/2023	Cusip:	91282CFG1
Status:	EXECUTED	Entry Time:	11:03:06	Debt Type:	TREA
Transaction Type:	Buy	Trade Date:	12/05/2023	Issue:	UNITED STATES TREASURY NOTES
Quantity:	500	Trade Time:	11:03:28	Ratings:	Aaa/
Settle Date:	12/06/2023	Cust Price:	98.604938	Attributes:	
FA Price:	98.604938	Index Factor:	1.000000	Coupon:	3.250
Credit(points):	0.000	Gross Price:	98.604938	Maturity:	08/31/2024
Total Credit(\$):	0.00	Principal:	493,024.69	Premium Call:	
Contra/Alpha:		Accrued Interest:	\$4,330.36	Par Call:	
Account Code:		Fees:	0.00	Prerefunded:	
Comments:		Net Money:	497,355.05	Insurance:	
Acting As:		YTW:	5.206	Dated date:	08/31/2022
FC Private Notes:		YTM:	5.206	Coupon Frequency:	SEMI
		YTC:	N/A	State:	US
				State Restrictions:	

Advisor Name:	Adam Bahner	Advisor Phone #:	4052862339
Trailer:			

Account Number:	48A189306	Firm Account:	0288910262	Misc. Fee:	
Other Fee:		Legend 1:		Legend 2:	
Trailer/Comment 1:		Trailer/Comment 2:		Trailer/Comment 3:	
Account Type:	Cash	Solicited:	Yes	Discretion:	No
Order Capacity:	P	Receipt Date:	12/05/2023	Time (hh:mm:ss) EST:	11:01:49
From:	Adam Bahner	Private Note:		IBD value:	028
Name 1:		%Split IP 1:		Name 2:	
%Split IP 2:		Pershing From:		Pershing Order Date:	
Pershing Time (hh:mm:ss) EST:		Liaison SC:		Type:	
Blmbrg RegRep#:		BBG Book:		TKG RULE STAT:	TKG_EVAL_WITHIN_RANGE
