

**CONSTRUCTION CONTRACT**  
**(AGREEMENT)**

This Construction Contract ("CONTRACT" or "AGREEMENT") is made the 23 day of February, 2023, between Ellsworth Construction OKC dba A-Tech Paving ("CONTRACTOR") and the Trustees of the Oklahoma City Airport Trust ("TRUST").

**WITNESSETH:**

That the CONTRACTOR and the TRUST, for the consideration hereinafter named, agree as follows:

**ARTICLE 1: SCOPE OF THE WORK**

The CONTRACTOR shall furnish all of the materials and perform all of the work shown on the Drawings and described in the Project Manual, including addenda thereto, which are incorporated into this Contract as if fully set forth herein, and which are entitled:

:

Project No. OCAT WRWA 2207  
North Campus Asphalt Paving Repairs & Rehabilitation  
Will Rogers World Airport

hereinafter called the "PROJECT," as prepared by Poe & Associates, Inc. ("ARCHITECT/ENGINEER"), and shall do everything required by this CONTRACT. The bidding on and supervision of construction of this CONTRACT shall be under the supervision of the ARCHITECT/ENGINEER.

**ARTICLE 2: TIME OF COMPLETION**

The work to be performed under this CONTRACT shall be commenced on the first day after a written "Notice to Proceed" is issued from the TRUST, by and through the Director of Airports, and shall obtain Final Acceptance by the TRUST within Two Hundred and Eighty (280) calendar days ("Time of Completion"). The estimated completion date is December 21, 2023, but the actual completion date will be based on the number of calendar days from the date of the Notice to Proceed.

**ARTICLE 3: CONTRACT SUM**

The TRUST shall pay the CONTRACTOR for the performance of the contract in current funds the total sum of

Three Million Two Hundred Fifty-Two Thousand Nine Hundred Seventy-Two and 85/100 Dollars

\$3,252,972.85.

The Contract sum is further defined as follows:

BASE BID \$ 3,252,972.85

**ARTICLE 4: DAMAGES**

It is mutually agreed between the parties that time is of the essence of this Contract. The PROJECT described in Article 1 shall obtain Final Acceptance by the TRUST in accordance with the Time of Completion established in Article 2. Should the PROJECT not be completed by the established Time of Completion, the CONTRACTOR agrees to have deducted or withheld from payments owed to the CONTRACTOR Liquidated Damages, not a penalty, of One Thousand Five Hundred Dollars (\$1,500) per Calendar Day, beginning the first day after the Time of Completion and continuing for each day thereafter until the PROJECT is completed.

#### **ARTICLE 5: THE CONTRACT DOCUMENTS**

The Drawings and the Project Manual, including any Bidding Documents referred to in Article 1 herein, are a part of this CONTRACT as if hereto attached and herein repeated. This CONTRACT is based on the Drawings and the Project Manual dated 11.29.2022 and addenda thereto dated 01.12.2023.

It is agreed that changes, additions, or deletions may be made to the Drawings and the Project Manual, and work to be performed, only upon an agreement executed in writing entered into by parties to this CONTRACT.

#### **ARTICLE 6: CLAIM OR INVOICE AFFIDAVIT**

Each monthly estimate for payment must contain, or have attached, an affidavit as required by Senate Bills 469 of the 1974 legislature and 189 of the 1975 legislature, executed on a form similar and essentially the same as that found in the Project Manual.

#### **ARTICLE 7: ASSIGNMENT**

CONTRACTOR may not assign this CONTRACT without the express written approval of the TRUST.

#### **ARTICLE 8: MISCELLANEOUS PROVISIONS**

- A. Notices, Consents, and Approvals – Notices or other communications to the TRUST pursuant to the provisions hereof shall be sufficient if sent by (i) registered or certified mail, postage prepaid, (ii) by a nationally recognized overnight courier, or (iii) facsimile transmission, addressed to the Oklahoma City Airport Trust, Will Rogers World Airport, 7100 Terminal Drive, Unit 937, Oklahoma City, Oklahoma 73159-0937, Telecopy (405) 316-3311; and bills, statements, and notices or communications to the CONTRACTOR shall be sufficient and irrefutably deemed received if sent by U.S. Postal Service regular mail, postage prepaid, whether or not actually accepted, or if hand-delivered, to Ellsworth Construction OKC dba A-Tech Paving, P.O. Box 10765, Midwest City, OK 73140; or to such respective addresses as the parties may designate in writing from time to time.
- B. Non-Waiver – The waiver by TRUST of any breach by the CONTRACTOR of any term, covenant, provision, or condition hereof shall not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, term, provision, or condition hereof, nor shall any forbearance by TRUST to seek a remedy for any breach by CONTRACTOR be a waiver by TRUST of its rights and remedies with respect to such or any subsequent breach of the same or with respect to any other breach.
- C. Binding Effect – This CONTRACT shall be binding upon the parties on the date of its execution by CONTRACTOR and TRUST and shall inure to the benefit of and be binding upon TRUST, CONTRACTOR, and their respective successors and assigns, if such assignments shall have been made in conformity with the provisions and conditions of this CONTRACT.
- D. Severability – In the event any terms, covenants, conditions, or provisions of this CONTRACT shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term, covenant, condition, or provision hereof.
- E. Entire Agreement; Modification Hereof – This CONTRACT (including the Exhibits hereto) expresses the entire understanding of TRUST and the CONTRACTOR concerning the CONTRACT and all agreements of TRUST and of CONTRACTOR with each other, and neither TRUST nor CONTRACTOR has made or shall be bound by any agreement or any representation to the other concerning the CONTRACT which is not expressly set forth in this CONTRACT (including the Exhibits hereto). This CONTRACT (including the Exhibits hereto) may be modified only by a written agreement of subsequent date hereto executed by TRUST and CONTRACTOR.

- F. Execution of Counterparts – This CONTRACT may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- G. Effect of Weekends and Holidays – Whenever this CONTRACT requires any action to be taken on a Saturday, a Sunday, or a Holiday, such action shall be taken on the first business day occurring thereafter in the place where the action is to be taken. Whenever in this CONTRACT the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, a Sunday, or a Holiday recognized by the City of Oklahoma City, such time shall continue to run until 11:59 p.m. on the next succeeding business day.
- H. Descriptive Headings: Table of Contents – The descriptive headings of the sections of this CONTRACT and any table of contents annexed thereto or copies hereof are inserted or annexed for convenience of reference only and do not constitute a part of this CONTRACT, and shall not affect the meaning, construction, interpretation, or effect of this CONTRACT.
- I. Construction and Enforcement – This CONTRACT shall be construed and enforced in accordance with the laws of the State of Oklahoma. Whenever in this CONTRACT it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform or not to perform, as the case may be, such act or obligation.
- J. Venue – The parties acknowledge and agree that in the event of any dispute or disagreement that necessitates court intervention, the venue for all litigation shall be the District Court of Oklahoma County, Oklahoma.
- K. Construction of Contract – In the event of ambiguity in any of the terms of this CONTRACT, it shall not be construed for or against any party on the basis that such party did or did not author the same.
- L. Recitals Contractual In Nature – The parties acknowledge and agree that the recitals as contained hereinabove in this CONTRACT are contractual in nature and binding on the parties.

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT on the day and year first written above.

Ellsworth Construction OKC dba A-Tech Paving:

By: Tim Lunday

Printed Name: Tim Lunday

Title: President

ATTEST and SEAL:

By: Jessica White

Title: Project Manager

APPROVAL RECOMMENDED:

Jeff Mulder  
Director of Airports

ATTEST:

OKLAHOMA CITY AIRPORT TRUST:

Amy K Simpson  
Trust Secretary



Jerry Salmon  
Trust Chairman

REVIEWED for form and legality.

Betsy Stravel  
Assistant Municipal Counselor/  
Attorney for the Trust

**CERTIFICATE OF NON-DISCRIMINATION**

**BIDDER MUST RETURN THIS EXECUTED FORM WITH THE CONTRACT DOCUMENTS**

In connection with the performance of work under this Contract, the Contractor agrees as follows:

- A. The Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, creed, sex, national origin, ancestry, age or disability. The Contractor shall take affirmative action to ensure that employees are treated without regard to their race, creed, color, national origin, sex, ancestry, age or disability, as defined by the Americans With Disabilities Act of 1990, Section 3 (2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, or pay or other forms of compensation and selection for training, including apprenticeship. The Contractor and Subcontractors shall agree to post in a conspicuous place, available to employees and applicants for employment, notices to be provided by the City Clerk of the City of Oklahoma City setting forth the provisions of this Section.
- B. In the event of the Contractor's noncompliance with this Nondiscrimination Clause, the Contract may be canceled or terminated by the Contracting Public Entity. The Contractor may be declared ineligible by the Contracting Public Entity for further contracts until satisfactory proof of intent to comply shall be made by the Contractor and/or Subcontractors.
- C. The Contractor agrees to include the requirements of this Nondiscrimination Certificate in any subcontracts connected with the performance of this Contract.

I have read the above stated clause and agree to abide by its requirements.

ATTEST: (Corporate Seal)

Ellsworth Construction OKC dba A-tech Paving  
Name of Corporation or Firm

Signature

Signature

Rachel COX, AP Administrator  
Type or Print name and title of person signing.

Tim Lunday, President  
Type or Print name and title of person signing.

If Contractor's company is not incorporated, no corporate seal is required, however, the following statement must be executed.

STATE OF Oklahoma ) ss.  
COUNTY OF Oklahoma )

Subscribed and sworn to before me this 1<sup>st</sup> day of February, 2023.

Jess White  
Notary Public

My Commission Expires:

06/13/2026



**OKLAHOMA CITY AIRPORT TRUST'S**  
**LOCAL SUBCONTRACTOR BUSINESS UTILIZATION PLAN & AFFIDAVIT**

THE FOLLOWING AFFIDAVIT MUST BE SUBMITTED BY THE SUCCESSFUL BIDDER, OR BIDDER'S AUTHORIZED AGENT, WITH THE CONTRACT DOCUMENTS. A NOTICE TO PROCEED WILL NOT BE ISSUED BY THE ARCHITECT/ENGINEER UNTIL THE AFFIDAVIT IS RECEIVED.

The undersigned, of lawful age, being first duly sworn on oath, affirms and states that the Bidder has the authority to execute this Public Construction Project Subcontracting Plan. The bidder further states they have read and understand the Resolution creating the Small, Disadvantaged, Minority and Woman-owned Subcontracting Program adopted by the Council of the City of Oklahoma City on June 3, 2008 and adopted by the Trust on January 27, 2010.

I. Public Construction Project Subcontracting Plan

- A. Outreach - In the space provided below describe in detail your company's efforts regarding outreach to small, minority, disadvantaged and women owned businesses in an effort to utilize their services in conjunction with Project OCAT WRWA 2207.

Ellsworth Construction OKC dba A-Tech Paving utilizes resources such as <https://www.odot.org/dbeinfo> to obtain information regarding current DBE Certified Businesses. Ellsworth also encourages DBE Certified Businesses that we have worked with in the past to submit quotes for current projects.

- B. Internal Efforts - In the space provided below describe in detail any initiatives in place within your company directed at establishing policies and procedures to ensure that small, minority, disadvantaged and women owned businesses are made aware of and given the opportunity to submit bids for sub-contracting on publicly funded projects.

Ellsworth actively solicits multiple quotes for each project we work and we strive to ensure a percentage of Those quotes requests are sent to DBE Certified Businesses.

Ellsworth Construction OKC dba A-tech Paving  
Name of Company, Partnership, Corporation, or Individual, herein called "Bidder"

Tim Lunday  
Signature of Bidder or Bidder's Authorized Agent

Tim Lunday, President  
Type or Print name and title of person who signed above

STATE OF Oklahoma  
COUNTY OF Oklahoma) ss.

Signed and sworn to or affirmed before me on this 1st day of February, 2023, by  
Tim Lunday as the above-named Contractor or Contractor's Authorized Agent.  
(Insert name of person signing above)

My Commission expires: 06/13/2026

Jess White  
Notary Public

My Commission number 22008070





**IMMIGRATION AFFIDAVIT**

**NOTICE of "OKLAHOMA TAXPAYER AND CITIZEN PROTECTION ACT OF 2007"**

**BIDDER MUST RETURN THIS EXECUTED FORM WITH THE CONTRACT DOCUMENTS**

The State of Oklahoma enacted the "Oklahoma Taxpayer and Citizen Protection Act of 2007" which prohibits entities and persons entering into a contract with a public employer for the physical performance of services within this state unless said contractor/vendor has registered and participated in Status Verification System for the purpose of verifying the work eligibility status and information of all new employees hired on or after November 1, 2007. Although the prohibition becomes effective for contracts entered after July 1, 2008, this section is included in these specifications to provide notice to contractor/vendors and in an effort to encourage contractor/vendors to prepare for the effects of the "Oklahoma Taxpayer and Citizen Protection Act of 2007." Therefore, included with this specification is a copy of the Immigration Affidavit that contractor/vendors will be required to submit with any contracts with a public employer for physical performance of services within the State of Oklahoma beginning after July 1, 2008.

**IMMIGRATION INDEMNIFICATION:**

By executing the affidavit below, the undersigned Contractor/vendor agrees to indemnify, defend, and hold harmless the City of Oklahoma City and the Oklahoma City Airport Trust against any and all losses, expenses, damages, costs, or attorney fees directly or indirectly resulting from the failure of the Contractor/vendor, or any of its agents, representatives, subcontractor/vendors, materialmen, or suppliers, to register or participate in the Status Verification System as set forth in the "Oklahoma Taxpayer and Citizen Protection Act of 2007," or the violation of said Act, or any suspension, termination, or invalidation of the Contract due to said failure or violation.

**IMMIGRATION AFFIDAVIT**

The undersigned as Contractor/vendor or Contractor's Authorized Agent, being of lawful age and being first duly sworn on oath, hereby swears, affirms and states that the Contractor/vendor has registered and participates in the Status Verification System as set forth in "Oklahoma Taxpayer and Citizen Protection Act of 2007" to verify the work eligibility status of all new employees hired on or after November 1, 2007.

The undersigned, as Vendor/Contractor or Authorized Agent, hereby expressly adopts and affirmatively incorporates herein by reference the above recitation as the sworn statement of the Contractor/vendor and the signatory.

Ellsworth Construction OKC dba A-tech Paving

Name of Contractor/Vendor

*Tim Lunday*

Signature of Contractor/Vendor or Authorized Agent

Tim Lunday, President

Type or Print name and title of person who signed above

STATE OF Oklahoma ) ss.

COUNTY OF Oklahoma

Signed and sworn to or affirmed before me on this 1<sup>st</sup> day of February, 2023, by Tim Lunday as the above-named Contractor or Contractor's Authorized Agent.  
(Insert name of person signing above)

My Commission expires: 06/13/2026

*Jess White*  
Notary Public

My Commission number: 22008070

This Affidavit must be completed by the Contractor/vendor, notarized by a Notary Public, and submitted prior to contract award pursuant 25 O.S. §§ 1312 and 1313.

