

CONSTRUCTION CONTRACT
(AGREEMENT)

This Construction Contract ("Contract" or "Agreement") is 23rd day of May, 2024, between DIVERSIFIED CONSTRUCTION OF OKLAHOMA, INC. ("Contractor") and the Trustees of the Oklahoma City Airport Trust ("Trust").

WITNESSETH:

That the Contract and the Trust, for the consideration hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF THE WORK

The Contractor shall furnish all materials and perform all 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 2109
Logistics Support Facility Fire Sprinkler Replacement – East Side
Mike Monroney Aeronautical Center

hereinafter called the "Project," as prepared by Frankfurt-Short-Bruza Associates, P.C. ("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 one hundred twenty (120) calendar days ("Time of Completion"). The estimated completion date is November 8, 2024, 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

Two million six hundred thirty-eight thousand six hundred fifty Dollars

\$2,638,650.00.

ARTICLE 4: DAMAGES

It is mutually agreed between the parties that time is of the essence with 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 (\$1,500.00) 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 March 28, 2024 and addenda thereto dated March 29, 2024 and April 24, 2024.

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: FAA MANDATORY PROVISIONS

A. GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in the Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefitting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractors and subcontractors from the bid solicitation period through the completion of the contract.

B. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the [Title VI] Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts: Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Contract and the [Title VI] Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Trust or the Federal Aviation Administration to be pertinent to ascertain compliance with such [Title VI] Nondiscrimination Acts, Authorities, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Trust or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the Non-discrimination provisions of this Contract, the Trust will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the Contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a Contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of [Paragraph 8B, subparagraphs] one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Trust or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Trust to enter into any litigation to protect the interests of the Trust. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

C. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance)

- The Age Discrimination Act of 1975, as amended, (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC §§ 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq.*).

ARTICLE 9: MISCELLANEOUS PROVISIONS

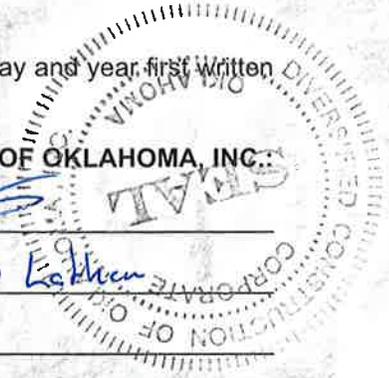
- A. Notices, Consents, and Approvals – Notices or other communications to the Trust pursuant to the provisions hereof shall be sufficient if sent by (i) registered or certified mail, postage prepaid, (ii) by a nationally recognized overnight courier, or (iii) facsimile transmission, addressed to the 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 6288 Boucher Drive, Edmond, OK 73034; 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 Contractor 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.

DIVERSIFIED CONSTRUCTION OF OKLAHOMA, INC.:

By: [Signature]
Printed Name: Brad Etkin
Title: Pres.



ATTEST:

[Signature]
By: EDWARD GOWER
Title: CORP. SEC.

APPROVAL RECOMMENDED:

[Signature]
Director of Airports

APPROVED by the Oklahoma City Airport Trust and signed by the Chairman this 23RD day of MAY, 2024.

ATTEST:

[Signature]
Trust Secretary



OKLAHOMA CITY AIRPORT TRUST:

[Signature]
Chairman

REVIEWED for form and legality.

[Signature]
Assistant Municipal Counselor/
Attorney for the Trust

