



ENGINEERING | SURVEYING | PLANNING

SMITH ROBERTS BALDISCHWILER, LLC

CONSULTING ENGINEERS – CERTIFICATE OF AUTHORIZATION No. 3949

100 N.E. 5TH STREET, OKLAHOMA CITY, OKLAHOMA 73104

TEL: 405/840-7094 FAX: 405/840-9116

AGREEMENT

PERSON OR ENTITY PLACING ORDER:

NAME / COMPANY	City of Midwest City/Public Works Department		
ADDRESS	8730 S.E. 15th St.		
CITY, STATE, ZIP	Midwest City, OK 73110		
TELEPHONE	OFFICE: 405-739-1215	CELL:	FAX:
EMAIL	pnenefee@midwestcityok.org		
CONTACT	NAME: Mr. Patrick Menefee	TITLE: Public Works Engineer	

PERSON OR ENTITY RESPONSIBLE FOR PAYMENT ("CLIENT"):

CHECK IF SAME AS ABOVE

NAME / COMPANY			
ADDRESS			
CITY, STATE, ZIP			
TELEPHONE	OFFICE:	CELL:	FAX:
EMAIL			
CONTACT	NAME:	TITLE:	

PROJECT NAME/DESCRIPTION: Construction Management & Inspection for 2018 Bond Program

SCOPE OF SERVICES: See Exhibit A

FEES AND EXPENSES: SEE EXHIBIT B. DESCRIBE: Fee is shown in Exhibit B-1

This is Hourly, Not to Exceed \$80,000.00

PAYMENT TERMS: 30 DAYS OTHER: _____

SRB PROJECT MANAGER: Craig Wallace **E-MAIL ADDRESS:** craig.wallace@srbok.com



TERMS

For the consideration recited and mutual promises herein made, incorporating Page 1 as if set forth fully herein, the parties agree:

1. **Location of Underground Utilities.** The underground utilities shown on any plans or drawings produced or provided by SRB pursuant to this agreement have been located from field survey information, existing drawings, and other available information. SRB makes no guarantee that the underground utilities shown comprise all such utilities in the area, either in service or abandoned, or that the utilities shown are in the exact location indicated. SRB does not physically locate any underground utilities, therefore, unless otherwise expressly provided herein, SRB shall not be responsible for determining the exact location of any underground utilities. Client agrees that the contractor who performs the work shall be required to comply with all applicable statutes, ordinances, codes, rules, and regulations, and specifications regarding location of underground utilities, and shall be required to verify the accuracy of all measurements and the physical location of all underground utilities prior to commencing work or ordering materials.

2. **Default/Remedies; Lien.** Should either Party breach this agreement, the prevailing Party in any litigation shall have the right to recover all of such party's reasonable expenses and costs incurred by reason of such litigation, including, but not limited to, attorney's fees, court costs, and costs of suit preparation. Upon breach of this agreement by Client, Smith Roberts Baldischwiler, LLC ("SRB") may without notice or demand file a lien on the property for or upon which services have been performed and Client shall be responsible for all costs of filing, prosecution, and release of said lien, including but not limited to court costs, litigation costs, expenses, and attorneys' fees, in addition to any other remedies allowed by law.

3. **Miscellaneous.** In case any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect, such provisions shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible and in any event, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. SRB may terminate this agreement upon thirty (30) days written notice to Client, and in such event SRB shall be entitled to payment for all sums due up until the effective date of termination. This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Oklahoma. Jurisdiction and Venue shall lie exclusively in the state and federal courts located Oklahoma County, Oklahoma. This Agreement is a final expression of the intent of the Parties and shall be modified only by a duly executed written instrument signed by both Parties. Failure to pursue any legal or equitable remedy or right available to a Party shall not constitute a waiver of such right, nor shall any such forbearance, failure or actual waiver imply or constitute waiver of subsequent default or breach. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or of any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such provision. Notwithstanding any other provision of this Agreement, neither party will be liable to the other for any punitive, indirect, special, consequential or incidental damages whatsoever, even if the parties were notified of the likelihood or possibility of such damages. The captions to the sections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation. This Agreement shall be binding upon the Parties hereto, their respective heirs, successors and assigns, but shall not be assigned by any party hereto without the written consent of the other party. This Agreement may be executed in counter parts, each of which will be deemed an original and all of which together will constitute one instrument.

4. **Progressive Billing / Late Payments.** Unless provided otherwise herein, all work in progress may be invoiced monthly and is due within thirty (30) days from date of invoice. All past due payments bear interest at the rate of 1.5% per month. If payments are past due, in addition to its right to collect, SRB may suspend work or refuse to deliver the work ordered.

PERSON OR ENTITY
PLACING ORDER:

Matthew O. Duke 1/9/24
Name: *Matthew O. Duke* Date
Title: *Mayor*

PERSON OR ENTITY
RESPONSIBLE FOR PAYMENT:

Paul Streets 1/10/24
Name: *Paul Streets* Date
Title: *PWA Director*

SRB:

Craig Walker 1/16/23
Name: *Craig Walker* Date
Title: *President*

CITY OF MIDWEST CITY 2018 MOVING FORWARD BOND PROGRAM
PROPOSITION #1 - STREETS
SCOPE OF SERVICES
EXHIBIT A

Construction Administration and Inspection Services

- (1) The Engineer shall provide administration of the construction contract during construction and until final payment is made to the Construction Contractor. The Engineer will have the authority to act on behalf of the City only to the extent provided in this Contract, unless otherwise modified by written instrument.
- (2) Meet with the City or its representatives at any time requested for consultation or conference.
- (3) Assist in coordination of pre-work conferences for the Construction Contractor, the City and all other interested parties. The City will issue all work orders for the project.
- (4) The Engineer is not required to provide construction staking but will periodically review the Construction Contractor's construction staking survey field notes and the actual staking to verify line and grade is in accordance with the Bidding Documents.
- (5) Provide interpretation of the plans and specifications in accordance with the intent of the Bidding Documents. Such interpretations shall be made upon request of the City and its representatives or the Construction Contractor, to safeguard the City against defects and deficiencies in the construction. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by the Construction Contractor. The Engineer does not guarantee the performance of the contract by the Construction Contractor, nor is it responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it shall not be responsible for a Construction Contractor's failure to carry out the work in accordance with the Bidding Documents.
- (6) Perform coordination of the work of inspection bureaus and laboratories selected by the City for the inspection and testing of construction materials. Receive reports and recommend approval or rejection of the materials based upon reports made by such laboratories or bureaus. The costs of all such tests and inspection by laboratories or bureaus will be paid by the City.
- (7) Review and recommend approval of testing laboratory claim vouchers.

- (8) The Engineer shall visit the site at intervals appropriate to the stage of construction to assess the progress and quality of the work by the Contractor and will regularly review the Contractor's field markups. The Engineer will further determine, in general, if the work is being performed in a manner indicating that the work, when completed, shall be in accordance with the Bidding Documents. The Engineer will review reports generated and services completed by the Inspector per Subtask D.20 of this Contract and will keep the City informed of progress of the work, and will endeavor to guard the City against defects and deficiencies of the work. The Engineer does not guarantee the performance of the contract by the Construction Contractor, nor is it responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it shall not be responsible for a Construction Contractor's failure to carry out the work in accordance with the Bidding Documents.
- (9) Review all necessary information for monthly estimates (**within seven (7) calendar days of receipt from the contractor**) of the quantity of work performed, and review the claim vouchers for payments to be made to the Construction Contractor during the progress of the work and upon completion of any and all work and report the same to the City.
- (10) Review the Construction Contractor's final request for payment (**within seven (7) calendar days of receipt from the contractor**) and certify that, to the best of its knowledge and industry standards, the completed work conforms to plans and specifications.
- (11) In addition to reports generated by the Inspection per Subtask 21 below, prepare and keep a record of the work performed by any contractor on this project and file with the City a monthly progress report covering the work performed by the contractor(s). The progress report shall be attached to the Construction Contractor's claim for partial or monthly payment.
- (12) Except as otherwise provided in this contract, communications with the Engineer's consultants will be through the Engineer. Communications with the Construction Contractor's subcontractors and material suppliers will be through the Construction Contractor. Communications with other City contractors will be through the City. The Engineer shall be available at all times for the purpose of communication.
- (13) The Engineer shall recommend to the City Engineer, or designee, rejection of work that does not conform to the Bidding Documents. At any time during construction, the Engineer may be given the authority to require additional inspection or testing of the work by the City Engineer.

- (14) The Engineer shall review for conformance with Bidding Documents, and approve or take other appropriate action upon the Construction Contractor's submittals, such as shop drawings, product data and samples. The Engineer's review of submittals will be promptly completed, but no longer than fourteen (14) calendar days from receipt of submittals. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Contractor as required by the Bidding Documents. The Engineer's review of the Construction Contractor's submittals will not relieve the Construction Contractor of its contractual obligation to the City as required by the Bidding Documents. The Engineer's review of the Construction Contractor's submittals will not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- (15) The Engineer shall reply to the Construction Contractor's requests for information, prepare clarification drawings, prepare change orders, field orders, amendments, field changes and construction change directives. The Engineer may recommend minor changes in the work, not inconsistent with the intent of the Bidding Documents. Such recommended changes shall be made by written order approved by the City Engineer and shall be binding upon the Construction Contractor.
- (16) The Engineer shall conduct observations and inspections to determine the quality of work to be accepted and the date or dates of final completion and acceptance. The Engineer shall receive and forward to the City all written warranties and any related documents required by the Bidding Documents and assembled by the Construction Contractor. The Engineer will recommend approval of the Construction Contractor's final certificate of payment upon completion of the work and compliance with the requirements of the Bidding Documents.
- (17) The Engineer will review daily reports furnished by the Inspector to evaluate and determine compliance with the Bidding Documents. Significant variations between reported conditions and the Bidding Documents shall be verified by the Engineer and resolved with the Construction Contractor and the City. The Engineer's duty to review daily reports and initiate remedial action shall not extend to the Construction Contractor's construction means, methods, techniques, sequencing or procedures or for safety precautions and programs in connection with the work.

(18) The Engineer shall maintain a record (“log”) of all documents it receives, creates or transmits during the construction of the project. The log shall include time requirements of responses if needed.

(19) Maintaining Project Schedule

(a) The Contractor will submit a proposed Project Schedule to the Engineer for review prior to the Pre-Work Conference. The Engineer will analyze the proposed Project Schedule prior to the Pre-Work Conference and advise the City Engineer as to whether the Contractor is likely to complete the Project within the time requirements in the Contract Documents. The City Engineer, Engineer, and Contractor will review the Project Schedule at the Pre-Work Conference and the Contractor will make such adjustments as may be directed by the Engineer. Adjustments to the proposed Project Schedule directed by the Engineer or City Engineer will not alter or absolve the Contractor’s responsibility for completion of the Project and all Work within the time requirements in the Contract Documents. The Project Schedule, as reviewed and revised at the Pre-Work Conference, will be the initial Project Schedule for the Project and all Work to be completed within the time requirements in the Contract Documents, and is considered incorporated herein.

(b) The Engineer will review the Contractor’s Project Schedule submissions, compliance and revisions monthly or more frequently as necessary to determine if the Contractor’s Project Schedule accurately describes the progress of the work and if the Project will be completed in accordance with the requirements specified in the Contract Documents. The Engineer will advise the City Engineer if the progress of work in the Project Schedule is not in compliance with the time requirements specified in the Contract Documents.

(c) Throughout the Project, the Engineer will analyze the invoice, any supporting documentation, the submitted Project Schedule, and any pending requests for Change Orders or Amendments. In conjunction with its analysis and certification of the Contractor’s invoices, the Engineer will analyze the updated Project Schedule. If the Project Schedule is unlikely to result in the Project being completed within the time requirements of the Contract Documents, the Engineer will meet with the Contractor to revise and develop a Project Recovery Schedule that will meet the requirements of the Contract Documents. Additionally, the Engineer will advise the City Engineer as to timeliness of completion of the Project and all Work within the Contract Documents, including any time added pursuant to a Change Order approved by the City.

(d) The Contractor will be solely responsible for the timely completion of the Project and all Work within the time requirements of the Contract

Documents, as may be revised by approved Change Orders. Review of the Project Schedule, or any revisions thereto, are not a warranty by the City Engineer, Engineer or the City that the progress of the Work in accordance with the Project Schedule will result in timely completion of the Project and all Work, nor will the City Engineer, Engineer or City be responsible for the Contractor's performance or for the Contractor's timely performance.

- (20) Construction Administration Services shall be performed by the Engineer in accordance with these Basic Services and Exhibit A – Scope of Work. Compensation for Construction Administration Services shall be paid proportional to the completion of the construction and shall not exceed the fee established in Exhibit B-1.

(21) Inspection Services

The Project Site Representative for the Engineer (Inspector) shall perform the following inspection functions/services:

- (a) Immediately upon receipt of a Construction Work Order, the Inspector shall be present at the construction site and shall perform continuous inspection of the quality of construction as the construction relates to the contract documents. This includes inspection of the pipe and fittings upon delivery by the manufacturer to verify the pipe and fittings are acceptable.
- (b) The Inspector shall immediately notify the Construction Contractor and the City if the work does not conform to the Contract Documents.
- (c) The Inspector shall attend all job site meetings and shall report to the City all issues concerning progress, quality assurance, quality control and dispute resolution.
- (d) The Inspector shall maintain at the construction site, a copy of all contract documents and other pertinent documents in a orderly manner including a current set of construction documents annotated to include all Project related changes and clarifications. The documents shall include, but not limited to, drawings, specifications, addenda, Requests for Information, Discrepancy and Nonconformance Reports, supplemental drawings, approved shop drawings, approved submittals, approved samples, color schedules, correspondence, accepted schedules, construction change orders, amendments, logs, meeting minutes and a contractor directory.
- (e) The Inspector shall maintain all shop drawings, project data or samples in an easily retrievable filing system at the construction site.
- (f) The Inspector shall maintain a daily log book or diary, recording all pertinent observations, including but not limited to:

1. Inspector's name, date, time and activities;
2. Weather conditions at the site;
3. The nature and location of work being performed by the Construction Contractor;
4. Identification of any work that the Inspector believes fails to strictly conform to the contract documents, along with the Inspector's actions regarding such observation;
5. Identification of any work determined to be nonconforming, along with the disposition of such nonconformance;
6. Copies of all reports made to the Construction Contractor of nonconforming work;
7. Description of all disputes among the Construction Contractor, Subcontractors and suppliers; and
8. Description of how each dispute is resolved.

(g) The Inspector shall be present at the construction site while work is proceeding and shall provide continuous inspection of the quality of construction. The Inspector will have authority to act on behalf of the City only to the extent provided by this Contract. The Inspector is not responsible for creating or implementing the Construction Contractor's schedules nor for any failure by the Construction Contractor to perform its work in accordance with plans and specifications.

(h) Communications with the Construction Contractor's subcontractors and material suppliers will be through the Construction Contractor. Communications with other City contractors will be through the City. The Inspector shall be available at all times for the purpose of communication.

(i) The Inspector shall coordinate his/her work with other on-site activities performed by the City and the Construction Contractor.

(j) The Inspector may NOT:

1. Authorize deviations from the contract documents.
2. Personally conduct or participate in tests or third party inspections.
3. Assume any of the responsibilities of the Construction Contractor, subcontractors or suppliers.
4. Expedite the work for the Construction Contractor.
5. Advise or issue directions to the Construction Contractor concerning aspects of construction means, method, techniques, sequences or procedures, or safety precautions and programs in connection with the work.
6. Authorize the City to occupy the project in whole or part.
7. Reject work or require special inspection or testing.

8. Order the Construction Contractor to stop the work or any portion thereof.

(k) The Inspector is not responsible for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyls (PCBs) or other toxic substances. If the Inspector has actual notice of such hazardous materials, he/she shall notify the City immediately of its discovery.

(l) Inspection Services shall be performed by the Engineer in accordance with these Basic Services and Exhibit A – Scope of Work. The Engineer will be paid for Inspection Services in accordance with the rate shown in Exhibit B-1. If the construction contract time exceeds the duration specified in Exhibit B-1, the compensation in excess of the funds in Exhibit B-1 will be paid as an Additional Service in accordance with the contract at the rate established in Exhibit B-1.

EXHIBIT A-1 CONSTRUCTION INSPECTOR ROLES

- Inspect for compliance with ADA standards including ramps, sidewalks, and intersection crosswalks. Coordinate with General Services to ensure compliance and consistency with Transition Plan and compliant documents.
- Inspect asphalt paving, concrete paving, and curb and gutter construction. Compliance to typical thicknesses and yield calculations for quantity and depth verification.
- Observe all third-party testing labs and materials testing required by project specifications. Cross check tests to verify validity of processes.
- Verify construction quantities and compare with contractor representatives for payment monthly or as required by the city engineer.
- Accurately record and submit daily inspection reports that include a detailed description of the work performed and maintain daily quantities of pay items for work completed.
- Track and record weather delays, working day count, and non-working days as allowed by the Standard Specification for Construction and Public Improvements, or as described in the special technical provisions of the contract.
- Inspection of subgrade, soil stabilization processes and aggregate base for grade, compaction, moisture and preparation for paving. This process should also include adherence to plan line and grades.
- Collect all asphalt, concrete, tack coat, milling, dirt, and sod tickets (all measurable materials used to complete the item of work) to be submitted to the project manager.
- Answers question's related to the plans and specifications which are not technical by nature and to represent the City to reach solutions on site which could avoid the need for conflict resolution.
- Attends and participates in preconstruction meetings with department staff, engineers, contractors, developers and other organizations.
- Inspects the installation of STS lines and related structures as required.
- Inspect the installation of Reinforced Concrete boxes or other related formed concrete structures on project.
- Observe all proof rolling and concrete seating operations. Proof rolling to be handled with the inspection of subgrade operations.
- Observe the application of tack coat. This activity is related to the inspection of Asphalt pavements.
- Insure all construction meets the minimum requirements set forth in the plans, project specifications, city standards, Specifications for Construction and Public Improvements, and the city engineer.
- Inspect project sites for installation and maintenance of traffic control devices (daily or as reasonable) to ensure public safety.
- Perform liaison role for the City and the Contractor, as the onsite representative. Understanding when PM or Engineers need to be involved with project decisions.
- Can be first line communications with the design engineers for any technical questions related to the project.
- Assist the Public Works/City Engineering Staff with requested duties and communications to contractor.

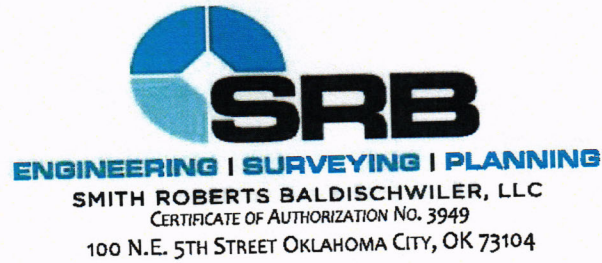


EXHIBIT B-1

Date: 11/16/23
 Project No.:
 PO. No.:
 SRB Job No.: 115726

**CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE
 (2018 BOND PROGRAM STREET REPAIR**

Engineering Fee : ESTIMATED \$ 78,780.00 Annual Fee
 \$ 9,847.50 Monthly Fee Average

Personnel	Hours	Rate	Total
Principal:	0 Hrs	@ \$210.00	\$ -
Project Manager	60 Hrs	@ \$195.00	\$ 11,700.00
Project Engineer:	0 Hrs	@ \$130.00	\$ -
Engineering Intern:	0 Hrs	@ \$86.00	\$ -
Engineering Technician:	0 Hrs	@ \$120.00	\$ -
Professional Land Suveyor:	0 Hrs	@ \$195.00	\$ -
CADD Technician:	0 Hrs	@ \$110.00	\$ -
Clerical:	48 Hrs	@ \$60.00	\$ 2,880.00
Chief Inspector:	180 Hrs	@ \$135.00	\$ 24,300.00
Inspection:	420 Hrs	@ \$95.00	\$ 39,900.00
Surveying (2-man Crew)	0 Hrs	@ \$165.00	\$ -
Inspection Overtime	0 Hrs	@ \$130.00	\$ -
Drone Operator	0 Hrs	@ \$120.00	\$ -
SUBTOTAL			\$ 78,780.00
ASSUMED PART TIME SERVICES FOR 8 MONTHS			
BASED ON RATE CATEGORIES LISTED ABOVE			
RATE INCLUDES VEHICLE AND PRINCIPAL TIME AS PART OF OVERHEAD			
TOTAL			\$ 78,780.00