

CONTRACT DOCUMENTS

**CITY OF LINCOLN, NEBRASKA,
LANCASTER COUNTY,
LINCOLN-LANCASTER COUNTY
PUBLIC BUILDING COMMISSION**

**Unit Price
Excavating, Grading, and Dozing Services
Bid No. 23-031**

**Brandt Excavating LLC
1900 Centerpark Rd.
Lincoln, NE 68512
(402) 474-4113**

**CITY OF LINCOLN,
LANCASTER COUNTY, NEBRASKA and
LINCOLN-LANCASTER COUNTY PUBLIC BUILDING COMMISSION
CONTRACT TERMS**

THIS CONTRACT, made and entered into by and between **Brandt Excavating LLC, 1900 Centerpark Rd., Lincoln, NE 68512**, hereinafter called the Contractor, and the City of Lincoln, Nebraska, a municipal corporation, and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska, and the Lincoln-Lancaster County Public Building Commission hereinafter called the "Owners".

WHEREAS, the Owners have caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

Excavating, Grading, and Dozing Services, Bid No. 23-031

and

WHEREAS, the Contractor, in response to such advertisement, has submitted to the Owners, in the manner and at the time specified, a sealed Proposal/Supplier Response in accordance with the terms of said advertisement; and

WHEREAS, the Owners, in the manner prescribed by law has publicly opened, examined, and canvassed the Proposals/Supplier Responses submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal/Supplier Response, a copy thereof being attached to and made a part of this Contract.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the Owners have agreed and hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute, construct, and complete all Work included in and covered by the Owner's award of this Contract to the Contractor, such award being based on the acceptance by the Owner of the Contractor's Proposal, or part thereof, as follows:

Agreement to full proposal

2. The Owners agree to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefore, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the Owner:

"Contracted Vendors" shall mean all vendors who contract or who have contracted with the Owners pursuant to Bid No. 23-031 for Unit Price – Excavating, Grading, and Dozing Services.

"Contracts" shall mean the collective contracts entered into between the Owners and the Contracted Vendors pursuant to Bid No. 23-031 for Unit Price – Excavating, Grading, and Dozing Services.

The Owners will pay for products/service, according to the Line Item pricing as listed in the Contractor's Proposal/Supplier Response, a copy thereof being attached to and made a part of this Contract, and the quote submitted for each project on the Unit Price Quote Sheet. The Owners shall order on an as- needed basis for the duration of the contract. The cost of products or services for City Departments shall not exceed \$300,000.00 for contracts during the contract term without approval by the City of Lincoln. The cost of products or services for County Agencies shall not exceed \$200,000.00 for contracts during the contract term without approval Board of Commissioners. The cost of products or services for the Public Building

Commission shall not exceed \$15,000.00 for contracts during the contract term without approval by the Board of the Public Building Commission.

3. EQUAL EMPLOYMENT OPPORTUNITY: In connection with the carrying out of this project, the Contractor shall not discriminate against any employee, applicant for employment, or any other person because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.
4. E-VERIFY: In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section.
5. GUARANTEE: A performance and payment bond in the amount of \$50,000.00 shall be required for the duration of the Contract.
6. ASSIGNMENT: This Contract shall not be assigned by Contractor to any other party without first obtaining the written consent of the Owners.
7. TERMINATION FOR CAUSE:
 - a) The Owners may terminate the Contract if the Contractor:
 1. Refuses or fails to supply enough properly skilled workers or proper materials;
 2. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
 3. Disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
 4. Otherwise commits a substantial breach of any provision of the Contract Documents.
 - b) When any of the above reasons exist, the Owners without prejudice to any other rights or remedies of the Owners may (after giving the Contractor and the Contractor's surety, if any, seven days' written notice) terminate employment of the Contractor. In addition the Owners may (subject to any prior rights of the surety):
 1. Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 2. Accept assignment of subcontracts; and
 3. Finish the Work by whatever reasonable method the Owners may deem expedient.
 - c) If the Contract is terminated by Owners as provided in this section, Contractor shall not be entitled to receive any further payment until the expiration of 35 days after Final Completion and acceptance of all Work by Owners.
 - d) If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for Owners staff time, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to Contractor. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Contractor shall pay such excess to Owners.
 - e) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination has been issued for the convenience of the Owners.

- f) No termination or action taken by Owners after termination shall prejudice any other rights or remedies of Owners provided by law or by the Contract Documents upon such termination; and Owners may proceed against Contractor to recover all losses suffered by Owners.
- 7b. TERMINATION BY THE OWNERS FOR CONVENIENCE:
- a) The Owners may at its option, terminate this Contract in whole or in part at any time without cause by written notice thereof to the Contractor.
- b) Upon any such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, the Owners shall pay Contractor in accordance with this Paragraph. The provisions of the Contract which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to the extent provided in such provisions.
- c) Upon receipt of any such notice of termination, the Contractor shall, unless the Notice directs otherwise, immediately:
1. Discontinue the Work to the extent specified by the Owners;
 2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of that portion of the Work, if any, the Owners has directed not to be discontinued;
 3. Promptly make every reasonable effort to procure cancellation upon satisfactory terms as determined by the Owners of all orders and subcontracts not related to that portion of the Work, if any, the Owners have directed not to be discontinued;
 4. Do only such other activity as may be necessary to preserve and protect work already in progress and to protect materials and plants and equipment on the Project Site or in transit thereto.
- d) Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and as to bona fide obligations the Contractor assumed prior to the date of termination.
- e) Upon termination, the Owners shall pay the Contractor the full cost of all Work properly done by the Contractor to the date of termination not previously paid for by the Owners. If at the date of such termination the Contractor has properly prepared or fabricated off site any goods for subsequent incorporation in the Work, the Owners may direct the Contractor to deliver such goods to the Site or to such other place as the Owners may reasonably determine, whereupon the Owners shall pay to the Contractor the cost for such goods and materials.
- f) Upon such termination, Owners shall pay to Contractor the sum of the following:
1. The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.
 2. Previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the Work.
 3. Any proven losses with respect to materials and equipment directly resulting from such termination.
 4. Reasonable demobilization costs.
- g) The above payment shall be the sole and exclusive remedy to which Contractor is entitled in the event of termination of the Contract by Owners pursuant to this provision; and Contractor will be entitled to no other compensation or damages and expressly waives same.
8. INDEPENDENT CONTRACTOR: It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the Owners and employees of the Owners shall not be deemed to be employees of the Contractor. The Contractor and the Owners shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the Owners' employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.
9. OWNER INCLUSION. It is understood and agreed by all parties that "Owner/s" shall include the City of Lincoln, Lancaster County, Nebraska and Lincoln-Lancaster County Public Building Commission. Whenever in the Contract documents, including the instructions to bidders, specifications, insurance requirements, bonds, and terms and conditions or any other documents which are a part of the

Contract, a singular entity is referenced (i.e., “the City” or “the County” or “Building Commission”) it shall mean the “Owners” encompassing the City of Lincoln, Lancaster County and Lincoln-Lancaster County Building Commission. Notwithstanding the foregoing, the duties and obligations of the City, the County, and the Building Commission pursuant to the Contract shall be treated as divisible and severable duties and obligations, and default by any one of the City, the County, or the Building Commission shall not be attributed to any other of the Owners, but shall remain the sole obligation of the defaulting entity.

10. AUDIT PROVISION: The (Service Provider or Contractor) shall be subject to an audit and shall, upon request, make available to the Public Building Commission or a contract auditor hired by the Public Service Commission, copies of all financial and performance related records and materials related to this Agreement, as allowed by law.
11. PERIOD OF PERFORMANCE. This Contract shall be effective upon execution through February 28, 2024 with the option to renew for three (3) additional one (1) year terms upon mutual consent of all parties. The Owners reserve the right to extend the contract beyond the renewal term upon written approval by all parties.
12. Notwithstanding anything contrary to the Contract Terms, the attached documents comprise the Contract, and consist of the following:
 1. Contract Terms
 2. Accepted Proposal
 3. Unit Price Quote Sheet
 4. Specifications
 5. Instructions to Bidders
 6. Insurance Requirements
 7. Employee Classification Act, Executive Order 83319
 8. Employee Classification Act Affidavit
 9. Construction Bonds
 10. Sales Tax Exemption Forms 13 & 17
(Note: These forms cannot be used for the WATER Division of the City of Lincoln. The WATER Division is taxable per Reg. 066.14A or applicable laws.)
 11. Notice to Bidders

The herein above mentioned Contract Documents form this Contract and are a part of the Contract as if hereto attached. Said documents which are not attached to this document may be viewed at: lincoln.ne.gov - Keyword: Bid - Awarded or Closed bids.

The Contractor and the Owners hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the Owners do hereby execute this contract upon completion of signatures on:

Vendor Signature Page
 City of Lincoln Signature Page
 Lancaster County Signature Page
 City of Lincoln-Lancaster County Public Building Commission

Vendor Signature Page

CONTRACT
Unit Price
Excavating, Grading, and Dozing Services
Bid No. 23-031
City of Lincoln, Lancaster County, City of Lincoln – Lancaster County
Public Building Commission
Brandt Excavating LLC

EXECUTION BY CONTRACTOR

IF A CORPORATION:

Attest:

Secretary Seal

Name of Corporation

Address

By: _____
Duly Authorized Official

Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Name of Organization

Type of Organization

Address

By: _____
Member

By: _____
Member

IF AN INDIVIDUAL:

Name

Address

Signature

City of Lincoln Signature Page

**CONTRACT
Unit Price
Excavating, Grading, and Dozing Services
Bid No. 23-031
City of Lincoln, Lancaster County, City of Lincoln – Lancaster County
Public Building Commission
Brandt Excavating LLC**

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

City Clerk

CITY OF LINCOLN, NEBRASKA

Leirion Gaylor Baird, Mayor

Approved by Executive Order No. _____

dated _____

Lancaster County Signature Page

**CONTRACT
Unit Price
Excavating, Grading, and Dozing Services
Bid No. 23-031
City of Lincoln, Lancaster County, City of Lincoln – Lancaster County
Public Building Commission
Brandt Excavating LLC**

EXECUTION BY LANCASTER COUNTY, NEBRASKA

Contract Approved as to Form:

The Board of County Commissioners of
Lancaster, Nebraska

Deputy Lancaster County Attorney

dated _____

**Lincoln-Lancaster County Public Building Commission
Signature Page**

**CONTRACT
Unit Price
Excavating, Grading, and Dozing Services
Bid No. 23-031
City of Lincoln, Lancaster County, City of Lincoln – Lancaster County
Public Building Commission
Brandt Excavating LLC**

EXECUTION BY LINCOLN-LANCASTER COUNTY PUBLIC BUILDING COMMISSION

ATTEST:

Public Building Commission Attorney

Chairperson, Public Building Commission

dated _____

COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

Construction Performance Bond
Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the re-writing of construction bond forms was to make them more understandable to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default settings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of the contract.

To accompany the Construction Performance Bond (EJCDC No.1910-28A) and the Construction Payment Bond (EJCDC No. 1910-28B)
Prepared by the Engineers' Joint Contract Documents Committee

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Brandt Excavating LLC
1900 Centerpark Rd.
Lincoln, NE 68512

SURETY (Name and Principal Place of Business):

Owner (Name and Address):

**City of Lincoln, Lancaster County and
Lincoln-Lancaster County Public Building Commission
555 South 10th St.
Lincoln, NE 68508**

CONSTRUCTION CONTRACT

Date:

Amount: \$50,000

Description (Name and Location):

For all labor, material and equipment necessary for Unit Price - Excavating, Grading, and Dozing Services, Bid No. 23-031

BOND

Date:

Amount: \$50,000

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Brandt Excavating LLC
1900 Centerpark Rd.
Lincoln, NE 68512

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28a (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The

Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined tender payment therefor to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
 - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Brandt Excavating LLC
1900 Centerpark Rd.
Lincoln, NE 68512

SURETY (Name and Principal Place
Of Business):

Owner (Name and Address):

**City of Lincoln, Lancaster County and
Lincoln-Lancaster County Public Building Commission
555 South 10th St.
Lincoln, NE 68508**

CONSTRUCTION CONTRACT

Date:

Amount: \$50,000

Description (Name and Location):

For all labor, material and equipment necessary for Unit Price - Excavating, Grading, and Dozing Services, Bid No. 23-031

BOND

Date:

Amount: \$50,000

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Brandt Excavating LLC
1900 Centerpark Rd.
Lincoln, NE 68512

Signature: _____
Name and Title:

SURETY

Company: (Corp. Seal)

Signature: _____
Name and Title:

EJCDC NO. 1910-28B (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY - NAME, ADDRESS AND TELEPHONE)
AGENT OR BROKER: OWNER'S REPRESENTATIVE (ARCHITECT, ENGINEER OR OTHER PARTY)

Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323

§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

Pursuant to Neb. Rev. Stat. § 77-1323, I, _____, do hereby certify that all equipment to be used on Bid No. 23-031, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in _____ County, Nebraska.

DATED this ____ day of _____, 2023.

By: _____

Title: _____

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

On _____, 2023, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____, **to** me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

(S E A L) Notary Public

EMPLOYEE CLASSIFICATION ACT AFFIDAVIT

For the purposes of complying with THE NEBRASKA EMPLOYEE CLASSIFICATION ACT, Nebraska Revised Statutes 48-2901 to 48-2912 and City of Lincoln Executive Order 083319,

I, _____, herein below known as the Contractor, state under oath and swear as follows:

- 1. Each individual performing services for the Contractor is properly classified under the Employee Classification Act.
- 2. The Contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services.
- 3. The Contractor has complied with Neb Rev Stat 4-114.
- 4. The Contractor has no reasonable basis to believe that any individual performing services for the Contractor is an undocumented worker.
- 5. The Contractor is not barred from contracting with the state or any political subdivision pursuant to NRS 48-2912 of this Act.
- 6. As the Contractor I understand that pursuant to the Employee Classification Act a violation of the Act by a contractor is grounds for rescission of the contract by the City of Lincoln, Lancaster County, and Lincoln-Lancaster County Public Building Commission. I understand that pursuant to the Act any contractor who knowingly provides a false affidavit may be subject to criminal penalties and upon a second or subsequent violation shall be barred from contracting with the City of Lincoln, Lancaster County, and Lincoln-Lancaster County Public Building Commission for a period of three years after the date of discovery of the falsehood.

I hereby affirm and swear that the statements and information provided on this affidavit are true, complete and accurate. The undersigned person does hereby agree and represent that he or she is legally capable to sign this affidavit and to lawfully bind the Contractor to this affidavit.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

TITLE: _____

State of Nebraska)
) ss.
County of _____)

This affidavit was signed and sworn to before me, the undersigned Notary Public, on this _____ day of _____, 20__.

Notary Public



23-031

**Brandt Excavating LLC
Supplier Response**

Event Information

Number: 23-031
Title: Unit Price - Excavating, Grading and Dozing Services
Type: Notice to Bidders
Issue Date: 1/18/2023
Deadline: 2/1/2023 02:00 PM (CT)

Contact Information

Contact: Sharon Mulder, Asst. Purchasing Agent
Address: Suite 200
Purchasing
440 S. 8th St.
Lincoln, NE 68508
Phone: 1 (402) 441-7428
Email: smulder@lincoln.ne.gov

Brandt Excavating LLC Information

Contact: Jared Pinkerton
Address: 1900 Centerpark Rd.
Lincoln, NE 68512
Phone: (402) 474-4113
Fax: (402) 474-4116
Email: jared@brandtexcavating.com

By submitting your response, you certify that you are authorized to represent and bind your company.

Jared Pinkerton
Signature

jared@brandtexcavating.com
Email

Submitted at 1/25/2023 07:38:11 AM (CT)

Bid Attributes

1 Instructions to Bidders

I acknowledge reading and understanding the Instructions to Bidders.

Yes (Yes)

2 Insurance Requirements and Endorsements

Vendor agrees to provide insurance coverage and comply with each provision listed in the **Insurance Requirements** form, including the submission of the **Certificate of ACORD** and the applicable **endorsements**.

Insurance Certificate and required endorsements are required at time of contract execution by awarded vendor.

Vendors are strongly encouraged to send the insurance requirements and endorsement information to their insurance agent prior to bid closing in order to expedite the contract execution process.

Yes (Yes)

3 Specifications

I acknowledge reading and understanding the specifications.

Yes (Yes)

4 Sample Contract

I acknowledge reading and understanding the sample contract.

Yes (Yes)

5 Unit Price Quotation Sheet

I acknowledge reading and understanding the Unit Price Quote Sheet and will complete the document according to the instructions for each project requested by the Owners.

Yes (Yes)

6	Contract Threshold Amount Vendors may contract for one of three levels as shown in Section 1.3 of the Specifications. Vendors must indicate in this section what threshold level they will contract for: \$0-\$10,000.00 \$0-\$25,000.00 \$0-\$50,000.00 <input type="text" value="\$0 - \$50,000.00"/>
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7	Performance/Payment Bond I acknowledge and accept that a Performance Bond and Payment Bond will be required upon award of contract for those companies selecting the Level 2 - \$25,000 and Level 3 - \$50,000 thresholds. <input checked="" type="checkbox"/> Yes (Yes)
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8	Purchase Order, Contract and Delivery Contact The City/County Purchasing Department issues Purchase Orders and Contracts via email to a designated contact person of the awarded Vendor. This designee will be the primary contact with the department through the delivery of the product/services. Please list the name, email address and phone number of the person who will be the contact person for the contract to be awarded. <input type="text" value="Jared Pinkerton, jared@brandtexcavating.com, 402-474-4113"/>
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9	Standard Specifications for Municipal Construction I acknowledge reading and understanding the current City of Lincoln Standard Specifications for Municipal Construction and Lincoln Standard Plans (including General Provisions and Requirements, and Material and Construction Specifications) View at: lincoln.ne.gov Standard Specifications for Municipal Construction <input checked="" type="checkbox"/> Yes (Yes)
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10	Reference Request Vendors who have not performed the types of services in this bid for the City, County of PBC in the last five (5) years shall attach References on Company letterhead to the Response Attachment section of this bid as requested in the Specifications.
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11	Contact Name of person submitting this bid: <input type="text" value="Jared Pinkerton"/>
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12	Contact Term The original term of the contract will be effective March 1, 2023 through February 29, 2024 with an option to renew for three (3) additional one (1) year terms upon mutual consent of all parties. <input checked="" type="checkbox"/> Yes (Yes)
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1 3	Pricing <p>The contract pricing shall remain fixed for the first year of the contract. After the initial one-year period, any request for an increase must be submitted in writing to the Purchasing Department a minimum of 90 days prior to the end of the current contract period with the request on company letterhead, state current price and new price, an authorized signature and documentation for such increase.</p> <p>The City reserves the right to deny any requested price increase. No price increases are to be billed to the Department prior to written amendment of the contract by the parties.</p> <p>The City will be given full proportionate benefit of any decreases for the term of the contract.</p> <input checked="" type="checkbox"/> Yes (Yes)
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1 4	Bid Documents <p>I acknowledge and accept that it is my responsibility as a Bidder to promptly notify the Purchasing Department Staff prior to the close of the bid of any ambiguity, inconsistency or error which I may discover upon examination of the bid documents including, but not limited to the Specifications.</p> <input checked="" type="checkbox"/> Yes (Yes)
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1 5	Employee Class Act Affidavit <p>I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract.</p> <input checked="" type="checkbox"/> Yes (Yes)
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1 6	U.S. Citizenship Attestation <p>Is your company legally considered an Individual or Sole Proprietor: YES or NO</p> <p>As a Vendor who is legally considered an Individual or a Sole Proprietor I hereby understand and agree to comply with the requirements of the United States Citizenship Attestation Form, available at: http://www.sos.ne.gov/business/notary/citizenforminfo.html</p> <p>All awarded Vendors who are legally considered an Individual or a Sole Proprietor must complete the form and submit it with contract documents at time of execution.</p> <p>If a Vendor indicates on such attestation form that he or she is a qualified alien, the Vendor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Vendor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.</p> <p>Vendor further understands and agrees that lawful presence in the United States is required and the Vendor may be disqualified or the Contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. 4-108.</p> <div style="border: 1px solid black; padding: 2px; width: fit-content;">NO</div>
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1 7	Tax Exempt Certification Forms <p>Materials being purchased in this bid are tax exempt and unit prices are reflected as such. A Purchasing Agent Appointment form and a Exempt Sales Certificate form shall be issued with contract documents. (Note: State Tax Law does not provide for sales tax exemption for proprietary functions for government, thereby excluding the purchases of pipes to be installed in water lines and purchase of water meters.)</p> <input checked="" type="checkbox"/> Yes (Yes)
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1 8	Electronic Signature <p>Please check here for your electronic signature.</p> <input checked="" type="checkbox"/> Yes (Yes)
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Bid Lines

1	Truck Driver - Hourly Labor Rate Quantity: <u> 1 </u> UOM: <u>Hour</u> Price: <input type="text" value="\$26.00"/> Total: <input type="text" value="\$26.00"/> Item Notes: LABOR RATES: Amount that the contractor will bill the owner for services provided. Labor rates shall include all health and welfare benefits, insurance, taxes, overhead and profit, and all other applicable fringe benefits.
2	Equipment Operator - Hourly Labor Rate Quantity: <u> 1 </u> UOM: <u>Hour</u> Price: <input type="text" value="\$32.00"/> Total: <input type="text" value="\$32.00"/> Item Notes: LABOR RATES: Amount that the contractor will bill the owner for services provided. Labor rates shall include all health and welfare benefits, insurance, taxes, overhead and profit, and all other applicable fringe benefits.
3	General Laborer - Hourly Labor Rate Quantity: <u> 1 </u> UOM: <u>Hour</u> Price: <input type="text" value="\$40.00"/> Total: <input type="text" value="\$40.00"/> Item Notes: LABOR RATES: Amount that the contractor will bill the owner for services provided. Labor rates shall include all health and welfare benefits, insurance, taxes, overhead and profit, and all other applicable fringe benefits.
4	Crawler Tractor - Hourly Equipment Rate (NO LABOR) Quantity: <u> 1 </u> UOM: <u>Hour</u> Price: <input type="text" value="\$162.00"/> Total: <input type="text" value="\$162.00"/> Item Notes: Hourly Rate to include overhead and profit
5	Front End Loader - Hourly Equipment Rate (NO LABOR) Quantity: <u> 1 </u> UOM: <u>Hour</u> Price: <input type="text" value="\$153.00"/> Total: <input type="text" value="\$153.00"/> Item Notes: Hourly Rate to include overhead and profit
6	Excavator - Hourly Equipment Rate (NO LABOR) Quantity: <u> 1 </u> UOM: <u>Hour</u> Price: <input type="text" value="\$183.00"/> Total: <input type="text" value="\$183.00"/> Item Notes: Hourly Rate to include overhead and profit
7	Back Hoe - Hourly Equipment Rate (NO LABOR) Quantity: <u> 1 </u> UOM: <u>Hour</u> Price: <input type="text" value="\$183.00"/> Total: <input type="text" value="\$183.00"/> Item Notes: Hourly Rate to include overhead and profit
8	Skid Steer Loader - Hourly Equipment Rate (NO LABOR) Quantity: <u> 1 </u> UOM: <u>Hour</u> Price: <input type="text" value="\$88.00"/> Total: <input type="text" value="\$88.00"/> Item Notes: Hourly Rate to include overhead and profit
9	Dump Truck - Hourly Equipment Rate (NO LABOR) Quantity: <u> 1 </u> UOM: <u>Hour</u> Price: <input type="text" value="\$84.00"/> Total: <input type="text" value="\$84.00"/> Item Notes: Hourly Rate to include overhead and profit
10	Elevating Motor Scraper - Hourly Equipment Rate (NO LABOR) Quantity: <u> 1 </u> UOM: <u>Hour</u> Item Notes: Hourly Rate to include overhead and profit

No Bid

1 1	Crawler Loader - Hourly Equipment Rate (NO LABOR) Quantity: <u> 1 </u> UOM: <u> Hour </u> Price: <input type="text" value="\$162.00"/> Total: <input type="text" value="\$162.00"/> Item Notes: Hourly Rate to include overhead and profit
1 2	Motor Grader - Hourly Equipment Rate (NO LABOR) Quantity: <u> 1 </u> UOM: <u> Hour </u> Price: <input type="text" value="\$133.00"/> Total: <input type="text" value="\$133.00"/> Item Notes: Hourly Rate to include overhead and profit
1 3	Mobilization - Labor and Equipment Quantity: <u> 1 </u> UOM: <u> Hourly Rate </u> Price: <input type="text" value="\$150.00"/> Total: <input type="text" value="\$150.00"/>
1 4	Emergency Services Quantity: <u> 1 </u> UOM: <u> Hour </u> Price: <input type="text" value="No response"/> Total: <input type="text" value="No response"/> Item Notes: Emergency services are defined as those services which are specifically required after normal business hours (5:00pm - 7:00am). The City will not allow added cost when the Contractor's time is outside the normal business hours due to scheduling issues with the Contractor. LABOR RATES: Amount that the contractor will bill the owner for services provided. Labor rates shall include all health and welfare benefits, insurance, taxes, overhead and profit, and all other applicable fringe benefits. Supplier Notes: <input type="text" value="Our rates listed above will remain the same for Emergency Services work."/>
1 5	Percentage Markup of Rental Equipment Quantity: <u> 1 </u> UOM: <u> Percentage </u> Total: <input type="text" value="15%"/> Item Notes: An invoice showing the type of equipment AND cost of rental from 3rd Party Vendor may be requested with the final invoice to verify quoted price.
1 6	Percentage Markup of Material, excluding freight Quantity: <u> 1 </u> UOM: <u> Percentage </u> Total: <input type="text" value="15%"/> Item Notes: An invoice showing the type of equipment AND cost of material from 3rd Party Vendor may be requested with the final invoice to verify quoted price
1 7	Percentage Markup of Subcontractor Costs Quantity: <u> 1 </u> UOM: <u> Percentage </u> Total: <input type="text" value="15%"/> Item Notes: An invoice showing the amount charged by Subcontractor may be requested with the final invoice to verify quoted price.

Response Total: \$1,396.00

**CITY OF LINCOLN LANCASTER COUNTY AND PUBLIC BUILDING COMMISSION
ATTACHMENT 1**

UNIT PRICE QUOTATION

EXCAVATING, GRADING, AND DOZING SERVICES, BID, NO. 23-031

Date: _____

TO DEPARTMENT/AGENCY REPRESENTATIVE:

FROM (CONTRACTOR): Brandt Excavating LLC

PROJECT NUMBER:

PROJECT DESCRIPTION:

When making a quotation please breakdown the Total Cost into the following categories: Labor, Materials, Equipment, Overhead and Subcontractors Costs. Fill in the following Tables in the areas as shown. If an item does not apply, please do not make an entry in that column.

TIME OF COMPLETION

Estimated Start Date	
Number of Days to Complete	

LABOR COST TABLE - REGULAR HOURS

CONTRACTOR	RATE	NO. HOURS	TOTAL \$ AMOUNT
Truck Driver	\$26.00		
Equipment Operator	\$32.00		
General Laborer	\$40.00		
Crawler Tractor (Hourly Equipment Rate/No Labor)	\$162.00		
Front End Loader (Hourly Equipment Rate/No Labor)	\$153.00		
Excavator (Hourly Equipment Rate/No Labor)	\$183.00		
Back Hoe (Hourly Equipment Rate/No Labor)	\$183.00		
Skid Steer Loader (Hourly Equipment Rate/No Labor)	\$88.00		
Dump Truck (Hourly Equipment Rate/No Labor)	\$84.00		
Elevating Motor Scraper (Hourly Equipment Rate/No Labor)	No Bid		
Crawler Loader (Hourly Equipment Rate/No Labor)	\$162.00		
Motor Grader (Hourly Equipment Rate/No Labor)	\$133.00		
Emergency Services			
Mobilization	\$150.00		
TOTAL LABOR			

EQUIPMENT AND MATERIAL COSTS

ITEM	COST	% of Markup	TOTAL \$ AMOUNT
Total Rental Equipment Costs		15%	
Total Materials Cost		15%	
Total Shipping Cost			

SUBCONTRACTORS COSTS

SUB-CONTRACTOR (NAME)	COST	% of Markup	TOTAL \$ AMOUNT
Sub No. 1		15%	
Sub No. 2		15%	
Sub No. 3		15%	

TOTAL PRICE (NOT TO EXCEED)

\$	
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FIRM: _____

BY: _____

ADDRESS: _____

PHONE

Change Order #: _____

Accepted: _____

Not Accepted: _____

APPROVED BY: _____

Department/Agency Representative

DATE: _____