



## **NOTICE OF REQUEST FOR PROPOSAL/NOTICE TO PROPOSERS**

Notice is hereby given that the Town of Hinton, Oklahoma will receive proposals delivered to Hinton Town Hall, Attn: Beverly Ball, Town Clerk, P.O. Box 159, 123 E. Main Street, Hinton, OK 73047 until 4:00 p.m. CST, November 7, 2018 in response to the REQUEST FOR PROPOSALS for a SANITARY SEWER EVALUATION STUDY. A Proposal Packet may be obtained from the Town Clerk in person or via the Town's website: [www.Hintonok.com](http://www.Hintonok.com). A non-mandatory pre-proposal meeting will be held on October 31, 2018 at 2:00

p.m. CST at the HEDA Building, 406 N. Broadway, Hinton, OK 73047. You are invited to submit a proposal to supply the professional services, products, or systems specified in the Proposal Packet. Proposals shall be made in accordance with this Notice, the Proposal Packet, and applicable law. By submitting a Proposal, the Proposer certifies that it, and any proposed subcontractors, complies 25 O.S. §1313 and participates in the Status Verification System. The Town of Hinton reserves the right to waive formalities, irregularities, and defects in any or all proposals, except as otherwise required by law. The Town of Hinton reserves the right to reject any or all proposals; to reject a portion of any or all proposals; to negotiate and execute or to not negotiate or execute a pricing agreement/contract with any proposer; and to solicit new or different proposals. The Town of Hinton reserves the right to negotiate and/or contract with one or more proposers for all or a portion of any proposal or proposed services. Proposals timely received in the Town Clerk's Office shall be opened and reviewed as set forth in the Proposal Packet.

# **Request for Proposals**

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## **Sanitary Sewer Evaluation Study**

### **Town of Hinton, Oklahoma**

**Deliver Proposals to:**

**Hinton Town Clerk  
PO Box 159  
Hinton, OK 73047**

**November 7, 2018 by 4PM**

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**Request for Proposals - SSES**

**Table of Contents**

Table of Contents ..... 2

1.0 Introduction..... 3

    1.1 Background and Objectives ..... 3

    1.2 Overview of Services ..... 3

    1.3 Description of the Sanitary Sewer System..... 3

2.0 Required Standards and Qualifications ..... 4

    2.1 Required Standards ..... 4

    2.2 Qualifications and References ..... 4

3.0 Scope of Work..... 5

    3.1 Manhole Inspections ..... 5

    3.2 Smoke Test Inspection..... 6

    3.3 CCTV Inspection with Preparatory Cleaning ..... 6

4.0 Description of Procurement Process ..... 7

    4.1 Procurement Process and Schedule ..... 7

    4.2 Owner Rights and Options ..... 7

    4.3 Expense of Submittal Preparation ..... 8

    4.4 Information Disclosure to Third Parties ..... 8

    4.5 Questions/Clarifications Request ..... 8

    4.6 Equal Opportunity Requirements ..... 9

5.0 Submittal of Proposals ..... 9

    5.1 General Instructions and Submittal Deadline..... 9

    5.2 Document Organization ..... 9

        5.2.1 Cover Letter..... 10

        5.2.2 Required Standards ..... 10

        5.2.3 Qualifications and References ..... 10

        5.2.4 Cost Proposal..... 10

        5.2.5 Appendices..... 10

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**Request for Proposals - SSES**

## **1.0 Introduction**

The Town of Hinton (Owner) is issuing this Request for Proposals (RFP) to solicit bids from firms capable of providing full sanitary sewer evaluation study (SSES) services for Hinton's sanitary sewer system as described in Section 3.0 of this document.

This RFP, issued in accordance with the provisions of the laws of the State of Oklahoma invites qualified firms to submit proposals to provide the services described.

### **1.1 Background and Objectives**

The Owner intends to utilize this SSES to identify primary areas of concern and prioritize future sewer system improvements. The objectives of the SSES include:

- Evaluating approximately 35,500 linear feet (LF) of sanitary sewer and approximately 90 manholes within the area of interest. The area to be evaluated is shown in Appendix A.
- Maximizing the use of SSES expenditures by first utilizing smoke testing and manhole inspections to identify the areas of greatest concern, and then employing Closed Circuit Television (CCTV) inspections in the areas that are anticipated to be in the poorest conditions.
  - Smoke Testing approximately 35,500 LF of sanitary sewer
  - Approximately 90 manhole inspections
  - Approximately 17,500 LF of CCTV Inspections
- Providing individual reports summarizing the results of each element inspected. An example of an element is an individual manhole, pipe segment inspected between manholes
- Completing all services and submitting all deliverables associated with the SSES within 60 days of Notice to Proceed.

It is understood that the information contained in the RFP and the qualifications and experience demonstrated by the Bidder, alongside cost proposals, shall be the general basis for the final selection.

### **1.2 Overview of Services**

The Owner is seeking qualified Bidders capable of providing SSES services for its sanitary sewer system. The Bidder ultimately selected from the Bidders pursuant to the Owner's procurement process shall be required to provide various services including, but not limited to:

- Smoke Testing
- Comprehensive Manhole Inspections following North American Sanitary Sewer Companies (NASSCO) standards
- CCTV Inspections
- Perform CCTV Inspections using NASSCO's Pipeline Assessment Certification Program (PACP) Certified Inspections and Reports, and provide PACP forms and ratings.

### **1.3 Description of the Sanitary Sewer System**

The primary focus of the SSES will be the old town proper. See Appendix A for an exhibit of the study area. Owner can provide GIS files of the sanitary sewer system to the successful Bidder if they are

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**Request for Proposals - SSES**

requested and once a contract is executed. The Owner has attempted to provide the most accurate data, Owner does not warrant the accuracy of its sanitary sewer maps.

## **2.0 Required Standards and Qualifications**

This section establishes standards of experience and financial capability that the Owner requires for a Bidder to be considered qualified. The Owner, in its sole discretion, will decide if Bidder meets the standards. Please note Bidder is the entity responding to this solicitation and not a parent company, joint venture partners, or other corporate affiliates.

### **2.1 Required Standards**

Bidders must:

- Have been in the business of providing full service sanitary sewer inspections for at least five years.
- Preferred to have completed full service sanitary sewer inspections in the State of Oklahoma within the last two years.
- Have completed full service sanitary sewer inspections that are comparable in size and scope to the Owner's system.
- Be able to furnish the following schedule of insurance. Submit evidence of the ability to provide coverage in these amounts with the Owner named as an additional insured:
  - Worker's Compensation/Employer's Liability - \$500,000 Each Accident
  - Commercial General Liability (Bodily Injury and Property Damage) - \$2,000,000 Each Occurrence
  - Automobile Liability (Bodily Injury and Property Damage) - \$1,000,000 Combined Single Limit
- Be able to secure a performance and payment bond from a surety licensed in the State of Oklahoma in an amount equal to the contract value. The Bidder shall provide a letter from surety indicating the ability to secure this bonding. See Appendix B for example bond documents.
- Be able to secure a bid bond from a surety licensed in the State of Oklahoma in an amount equal to 5% of the bid value. The Bidder shall provide a letter from surety indicating the ability to secure this bonding. See Appendix B for example bond documents.

### **2.2 Qualifications and References**

Bidders shall demonstrate their ability to undertake the Owner's project by providing the technical qualifications of the Bidder, individual team members and principal subcontractors, if applicable. The Owner reserves the right to conduct an independent investigation of the Bidder's technical qualifications by contacting project references, accessing public information, or contacting independent parties. Additional information may be requested during the evaluations of technical qualifications. The Bidder shall provide the following information with their Bid to demonstrate its technical qualifications:

Corporate Profile:

- Include the full name, tax identification number, main office address and telephone numbers of the Bidder and the principal contact person. This shall include a description of the firm or organization (corporation, partnership, joint venture, etc.) that will serve as the contracting party.

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**Request for Proposals - SSES**

- The Proposal shall also identify which portions of the work, if any, will be subcontracted. If subcontractors are proposed, the proposed contractual relationships between the Bidder and all major partners and subcontractors relative to the project shall be outlined in the Proposal.
- Provide a description of the circumstances, if any, related to any Town of Hinton employee, Town Council member or other officer, employee or person who is payable in whole or in part from the Owner that has or had any direct or indirect personal interest in the Bidder. An anti-collusion affidavit must be signed with the successful Bidder prior to contract execution.

References:

- Provide information about the Bidder's overall experience with at least three (3) SSES projects utilizing the PACP inspection methods in the area. At a minimum, provide the following details:
  - Quantity of LF evaluated
  - Types of inspections performed
  - Number of manholes inspected
  - Certifications utilized during inspection
  - Other processes utilized on representative SSES projects.
- Provide a list of previous projects and contact information available for client reference.
- Provide proposed project manager with qualifications and resume.
- Submit examples of each: smoke testing, manhole inspection, and CCTV reports.

### **3.0 Scope of Work**

The following sections detail the anticipated scope of work. Comprehensive reports summarizing the findings and data produced from the inspections shall be provided as part of the project. The field inspections described in the following sections shall be completed within a 90-day time period.

#### **3.1 Manhole Inspections**

Approximately ninety (90) manhole inspections are anticipated to measure features, look for structural defects, and identify potential sources for Inflow and Infiltration (I&I). The following sequential steps are expected when performing manhole inspections:

- Locate the manhole designated for inspection
- Erect proper traffic control measures
- Open manhole and inspect manhole frame and lid
- Determine what type of construction material, evaluate the structural condition of the manhole and sewers, and determine the size of all manhole components
- Digitally photograph any identified structural defects
- Measure depth of inverts from top of rim
- Close manhole lids and remove traffic control

Further, manhole inspections shall include GPS location of manhole positions with sub-meter accuracy (+/- 3 ft). This will enable a check and update of the Owner's existing mapping and will enable the Bidder to develop a map of the system inspected. In addition, the GPS locations can be utilized to document that each manhole was inspected, and confirm that the location was not confused with another manhole due to any difficulties in reading the map. Bearing direction of the outgoing pipe, along with clock positions of

**Request for Proposals - SSES**

the incoming pipes, will be collected to establish the orientation of the manhole in reference to the nearby sewer network. Pictures looking down into the manhole and of the area around the manhole shall be taken to reference its location. Pictures of any defects shall be taken, as well as pictures of each of the incoming and outgoing line connections. A surveying rod shall be placed next to the incoming and outgoing sewers during the photograph to verify all pipe sizes.

**3.2 Smoke Test Inspection**

Smoke testing will be performed on approximately 35,500 LF of sanitary sewer according to NASSCO standards. At least 24 hours prior to smoke testing, the local authorities (Fire departments, police, public utilities, etc.) must be notified of the smoke testing effort and schedule. Bidder will provide exact locations (streets) of where the work will be performed each day. Bidder will also notify additional personnel each morning prior to starting work as requested by the Owner.

In addition to notifying the various authorities discussed, smoke test notices should be distributed to each home or business potentially affected by the smoke 24 to 48 hours before the work is performed. The public notices provide information about the purpose of smoke testing the sewers, the schedule, and what to do if smoke enters the house. Smoke testing may not exceed 1,000 LF in any direction with any one setup. Bidder shall provide an example of smoke test notices prior to distribution for approval by the Owner. The phone number of a local representative will also be added to the smoke test notice to ensure the most rapid response back to the public.

Smoke shall be blown into the sewer system at the selected manholes using an appropriate smoke blower. Per NASSCO standards, smoke fluid, smoke candles, or approved equal shall produce continuous smoke that can be controlled by the testing crew for the duration of the test. The smoke generated shall be white to gray in color, leave no residue, and shall be non-toxic and non-explosive. The Bidder shall supply the Material Safety Data Sheet (MSDS) to the Owner.

Photos, with a clear indication of the defect, are to be taken of each defect that is observed. The locations where smoke is observed shall be recorded with handheld, sub-meter accuracy GPS data collectors. Information regarding the characteristics of the defect and its surrounding area shall also be recorded. GPS coordinates shall be collected for each of the manholes in the study area to document smoke coverage and provide precise measurements of the footage tested in the study.

**3.3 CCTV Inspection with Preparatory Cleaning**

CCTV inspections will be performed on approximately 17,500 LF of sanitary sewer. Bidder will generate shape files and maps using the latest data collected during the manhole and smoke test inspection to highlight the line segments scheduled for inspection. These files will be submitted with the final report as an electronic deliverable.

Preparatory cleaning (a maximum of three passes with a jet rodder) will be performed prior to the CCTV inspection. All operators and field personal are to have completed PACP certification and confined space training. All data is to be recorded digitally during the inspection. The CCTV inspection data will be viewed and graded for video and audio quality, as well as having defect codes checked for accuracy.

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**Request for Proposals - SSES**

Heavy cleaning will be considered as any additional cleaning required if three passes with a typical jet rodder does not correct the issue. Heavy cleaning will be billed as an additional item at an hourly rate.

Town water can be provided at a bulk water station at no cost to the service provider. Excess water can be disposed of by dumping back into the system at a location determined between Owner and successful Bidder.

#### 4.0 Description of Procurement Process

This RFP will provide the basis for selecting the Respondent, with whom the Owner expects to enter into an Agreement. The Owner reserves the right to reject any and all proposals.

The Owner will evaluate all responsive proposals containing the information and cost proposals requested by this RFP. Upon evaluation of the submitted information and cost proposals, the highest rated Bidder will be selected.

##### 4.1 Procurement Process and Schedule

A summary procurement schedule of the major activities associated with this solicitation process is presented below. This schedule is based on the Owner's intent to enter into an agreement with the selected Bidder by November 20, 2018.

<b>Activity</b>	<b>Date</b>
Issue RFP	October 17, 2018
Pre-Bid Meeting	October 31, 2018
Receive proposals from Bidders (Proposal due date)	November 7, 2018
Evaluation and selection of highest rated Bidder	November 13, 2018
Initiate contract negotiations with most qualified Bidder	November 14, 2018
Award contract	November 20, 2018

The Pre-Bid Meeting will take place on October 31, 2018 at 2:00 PM at the following address:

Hinton Economic Development Authority (HEDA)  
406 N Broadway  
Hinton, OK 73047

##### 4.2 Owner Rights and Options

The Owner, at its sole discretion, reserves the following rights:

- To supplement, add to, delete from and change this solicitation document
- To change or alter the schedule for any events associated with this procurement upon notice
- To determine which Bidder, if any, should be selected for negotiations
- To reject any or all proposals or information received pursuant to this RFP

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**Request for Proposals - SSES**

- To supplement, amend, substitute or otherwise modify this RFP at any time
- To conduct clarification discussions, at any time, with one or more proposers
- To receive questions concerning the RFP from proposers and to provide such questions, and the Owner's responses, if any, to all proposers
- To cancel this RFP with or without the substitution of another RFP or pre-qualification process
- To request additional data or information after the submittal date, if such data or information is considered pertinent, in the Owner's sole view, to aid the review and selection process
- To conduct investigations with respect to the qualifications and experience of each Bidder
- To take any action affecting the RFP or the services subject to this RFP that would be in the best interests of the Owner
- To require one or more Bidders to supplement, clarify or provide additional information in order for the Owner to evaluate the RFPs submitted
- To waive any defect or technicality in any RFP received
- To reject any portion of any submittal and/or reject all submittals, to waive any informalities or irregularities in the submittals or to re-advertise
- All submitted proposals become the property of the Owner and will not be returned
- Neither the Owner, its staff, its representatives, nor any of its consultants or agents will be liable for any claims for damages resulting from the solicitation, collection, review, or evaluation of responses to the RFP

**4.3 Expense of Submittal Preparation**

The Owner accepts no liability for the costs and expenses incurred by the Bidders in responding to this RFP, preparing responses for clarification, attending interviews, participating in contract development sessions or meeting and presentations required for the contract approval process. Each Bidder that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that they cannot make any claims whatsoever for reimbursement from the Owner for the costs and expenses associated with the procurement process.

**4.4 Information Disclosure to Third Parties**

The public disclosure of the contents of each proposal submitted in response to this RFP is generally governed by the Oklahoma Open Meetings Act. By responding to this RFP, Bidders waive any challenge to the Owner's decisions in this regard.

Notwithstanding the foregoing, Bidders recognize and agree that the Owner will not be responsible or liable in any way for any losses that the Bidder may suffer from the disclosure of information or materials to third parties.

**4.5 Questions/Clarifications Request**

No interpretation or clarification of the meaning of any part of this RFP will be made orally to any Bidder. Bidders must request such interpretation or clarification in writing from the Owner. **If any Bidder has questions concerning the proposed project, finds discrepancies or omissions in the solicitation**

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**Request for Proposals - SSES**

**document or otherwise requires clarification, such matters should be submitted in writing no later than 4:00 p.m. local time on November 5, 2018 to:**

Matthew Mears, Town Administrator  
PO Box 159  
Hinton, OK 73047  
Email: administrator@hintonok.com  
Phone: (405) 542-3253

Only emailed or written contacts will be acknowledged.

Any and all such interpretations and supplemental instructions will be made in the form of written addenda which will be sent to all recipients of the RFP and shall become part of this RFP. Copies of all questions and answers, and any addenda to supplement the RFP, will be sent by email, fax, or U.S. Mail to each Bidder no later than three days prior to the proposal due date. Only formal written responses to properly submitted questions will be binding.

#### **4.6 Equal Opportunity Requirements**

The selected Bidder, in the performance of all services, will not discriminate on grounds of race, color, religious creed, national origin, age, sex or handicap in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment.

### **5.0 Submittal of Proposals**

#### **5.1 General Instructions and Submittal Deadline**

Bidders are requested to submit three (3) hard copies of the proposal and one (1) digital copy on a flash drive to:

Hinton Town Clerk  
PO Box 159  
Hinton, OK 73047

Proposals are due on November 7, 2018 by 4 p.m. local time. No emailed copies will be accepted. The package should be sealed and clearly labeled "Sanitary Sewer Evaluation Study Proposal for the Town of Hinton."

#### **5.2 Document Organization**

The proposal must provide the following information and be organized into sections that include at least the following:

- Cover Letter
- Required Standards
- Qualifications
- Project References

**Request for Proposals - SSES**

- Cost Proposal
- Appendices (Example insurance certificate, example reports, etc.)

Narrative pages are to be 8½x11 inches and all materials shall be bound into one volume. A clear and concise presentation of information is encouraged.

Bidders are required to organize the information requested in this RFP in accordance with the format outlined. Failure of the Bidder to organize the information required by this RFP as outlined may result in the Owner, at its sole discretion, disqualifying the Bidder from further consideration.

**5.2.1 Cover Letter**

The proposal must include a letter of transmittal attesting to the accuracy of the contents of the proposal. The cover letter should provide the name, address and telephone numbers of the Bidder along with the name, title, address and telephone numbers of the executive that has the signing authority to contract with the Owner.

**5.2.2 Required Standards**

Responses to requests contained in Section 2.1.

**5.2.3 Qualifications and References**

Responses to requests contained in Section 2.2.

**5.2.4 Cost Proposal**

The Bid Form is to be filled out in its' entirety to complete the Cost Proposal. See Appendix B for the Bid Form. All bids must be made on the required Bid Form and submitted with the Proposal. All blank spaces for bid prices must be filled in, in ink or typewritten, and the Bid Form must be fully completed and executed when submitted. This project is based on a Unit Price Schedule; Final payment for each item will be based on the actual work performed, with documentation provided for linear footage, smoke testing, and manholes inspected to substantiate payment.

**5.2.5 Appendices**

Include example reports and supporting documentation in an appendix. Ensure that the information has been concisely compiled and easy to follow.

**5.3 Notice of Award**

The party to whom the contract is awarded will be required to execute an Agreement within ten (10) calendar days from the date when Notice of Award is delivered to the Bidder. In case of failure of the Bidder to execute the Agreement, the Owner may consider the Bidder in default, in which case the Bid Bond accompanying the proposal shall become the property of the Owner.

The Owner, within ten (10) days of receipt of acceptable Performance Bond, Statutory Bond, and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the

***Request for Proposals - SSES***

Agreement within such period, the Bidder may by Written Notice withdraw the signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Owner.

The bond requirements of this section apply only to contracts greater than \$50,000.

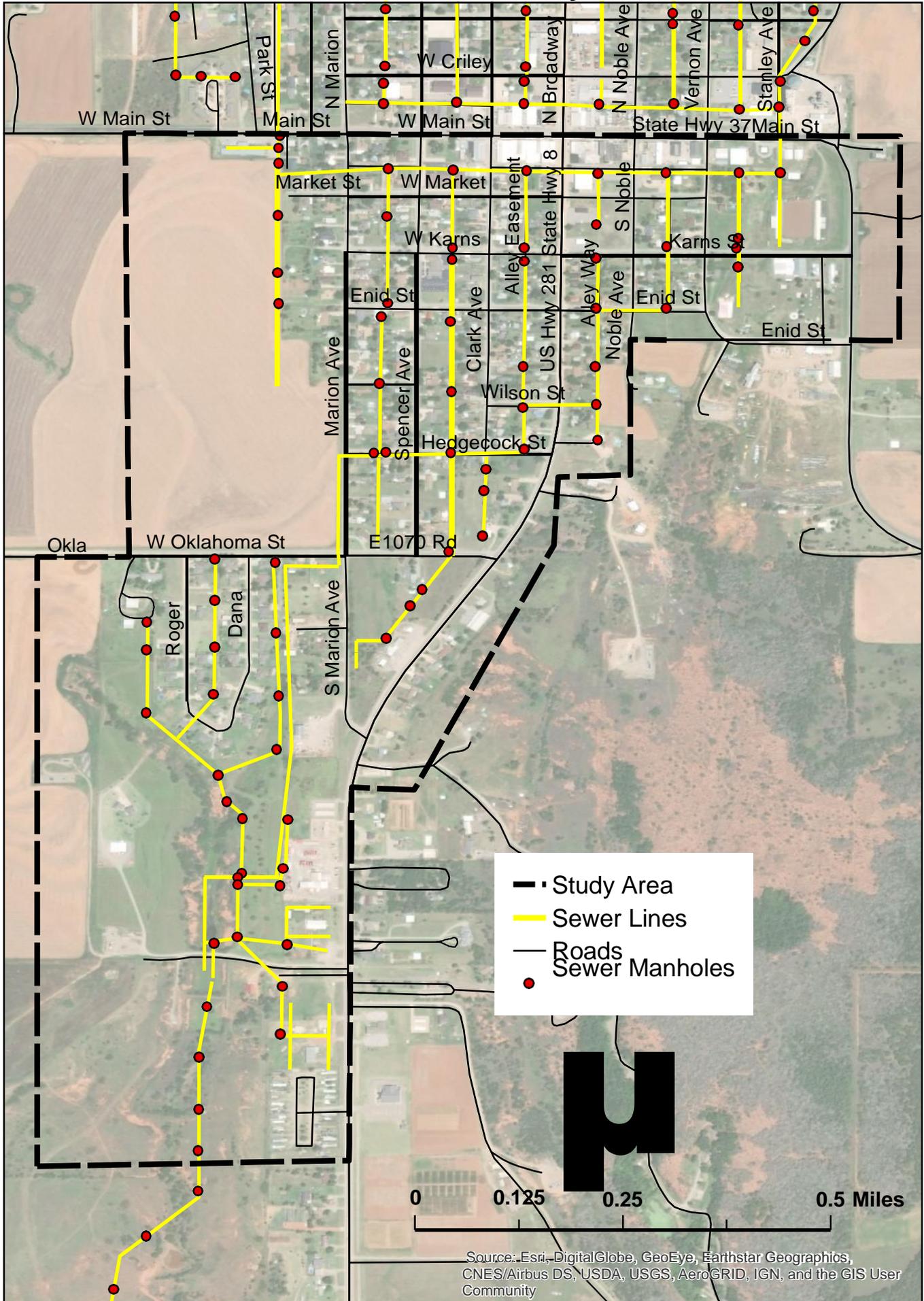
**5.4 Notice to Proceed**

The Notice to Proceed shall be issued within ten (10) days of the execution of the Agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Owner and Contractor. If the Notice to Proceed has not been issued within the ten (10) day period or within the period mutually agreed upon, the Contractor may terminate the Agreement without further liability on the part of either party.

END OF REQUEST FOR PROPOSALS

## Appendix A • Study Area

# Hinton SSES Study Area



Appendix B • Bid Form and Example Bond Documents

**BID FORM**

Proposal of \_\_\_\_\_

\_\_\_\_\_ (hereinafter called BIDDER"),

organized and existing under the laws of the State of \_\_\_\_\_

doing business as \* \_\_\_\_\_

To the **Town of Hinton** (hereinafter called "OWNER").

In compliance with your Request for Proposals, BIDDER hereby proposes to perform all work for the services associated with the following:

**Hinton Sanitary Sewer Evaluation Study**

in strict accordance with the AGREEMENT, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of joint BID each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence work under the agreement on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within **NINETY (90)** consecutive calendar days thereafter.

BIDDER acknowledges receipt of the following ADDENDUM:

\_\_\_\_\_  
  
\_\_\_\_\_

**\* Insert "a corporation," "a partnership" or "an individual" as applicable**

BIDDER agrees to perform all the work described in the REQUEST FOR PROPOSALS for the unit prices or lump sum as indicated on the unit price schedule summarized in Table 1. The OWNER shall have the option to deduct any or all of the bid items at the unit cost or lump sum provided by the BIDDER.

**Table 1: Unit Price Schedule**

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>EST. QUANTITY</b>	<b>UNIT COST*</b>	<b>TOTAL COST*</b>
1	Manhole Inspection	EA	90		
2	Smoke Test	LF	35,500		
3	Closed Circuit Television Inspection	LF	17,500		
4	Heavy Cleaning	HOUR	10		
5	Mobilization/ Demobilization	LS	1		
<b>BID TOTAL</b>					

*\*Write in bid proposals in the table above*

Respectfully submitted:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

---

License Number (if applicable)

(SEAL - If Bid is by a Corporation)

ATTEST: \_\_\_\_\_

**PERFORMANCE BOND**

CONTRACTOR (name and address):

SURETY (name and address of principal place of business):

OWNER (name and address):

Town of Hinton  
PO Box 159  
Hinton, OK 73047

**AGREEMENT**

Effective Date of the Agreement: November 30, 2018

Amount:

Description (name and location): Hinton Sanitary Sewer Evaluation Study

**BOND**

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Contract):

Amount:

Modifications to this Bond Form:  None  See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

\_\_\_\_\_(seal)  
Contractor's Name and Corporate Seal

\_\_\_\_\_(seal)  
Surety's Name and Corporate Seal

**By:** \_\_\_\_\_  
Signature

**By:** \_\_\_\_\_  
Signature (attach power of attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Attest:** \_\_\_\_\_  
Signature

**Attest:** \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.**

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference.
2. If the Contractor performs the Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Contract, the Surety's obligation under this Bond shall arise after:
  - 3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2 The Owner declares a Contractor Default, terminates the Contract and notifies the Surety; and
  - 3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Contract to the Surety or to a contractor selected to perform the Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. 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:
  - 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Contract;
  - 5.2 Undertake to perform and complete the Contract itself, through its agents or independent contractors;
  - 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven 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 Paragraph 5.4, and the Owner refuses the payment 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.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1 the responsibilities of the Contractor for correction of defective work and completion of the Contract;
  - 7.2 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 5; and
  - 7.3 liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the 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, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
11. 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 a declaration of 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 periods of limitations 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 page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the work 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. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Contract after all proper adjustments have been made including allowance for the Contractor for 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 Contract.

14.2 Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Contract or to perform and complete or comply with the other material terms of the Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

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**PAYMENT BOND**

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

Town of Hinton  
PO Box 159  
Hinton, OK 73047

**CONTRACT**

Effective Date of the Agreement:  
Amount:  
Description *(name and location):*

**BOND**

Bond Number:  
Date *(not earlier than the Effective Date of the Agreement of the Contract):*  
Amount:  
Modifications to this Bond Form:  None  See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Contractor's Name and Corporate Seal *(seal)*

\_\_\_\_\_  
Surety's Name and Corporate Seal *(seal)*

**By:** \_\_\_\_\_  
Signature

**By:** \_\_\_\_\_  
Signature *(attach power of attorney)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Attest:** \_\_\_\_\_  
Signature

**Attest:** \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.**

1. The Contractor and 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 Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
  - 5.1 Claimants who do not have a direct contract with the Contractor,
    - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2 Pay or arrange for payment of any undisputed amounts.
- 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, 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 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.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the work 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. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## 16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **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 term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the 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.

16.3 **Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Contract or to perform and complete or comply with the other material terms of the Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

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**BID BOND**

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

---

BIDDER *(Name and Address)*:

SURETY *(Name, and Address of Principal Place of Business)*:

OWNER *(Name and Address)*: Town of Hinton, PO Box 159, OK 73047

**BID**

Bid Due Date: November 7, 2018

Description: Hinton Sanitary Sewer Evaluation Study

**BOND**

Bond Number:

Date:

Penal sum

\$

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(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

**BIDDER**

**SURETY**

(Seal)

(Seal)

\_\_\_\_\_  
Bidder's Name and Corporate Seal

\_\_\_\_\_  
Surety's Name and Corporate Seal

By:

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Attest:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*Note: Addresses are to be used for giving any required notice.*

*Provide execution by any additional parties, such as joint venturers, if necessary.*

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

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