



## Tooele County Council Agenda Item Summary

**Department Making Request:**  
Roads Department

**Meeting Date:** 11-29-21

**Item Title:** Roads Department Storm Drain Project

**Summary:** This is a new contract. It is being paid for with Class B funds. We budgeted for the project in November of 2020 and created a line item for it in the 2021 budget. It is a storm drain system for the Roads Department yard. The storm drain system isn't adequate and needs to be brought up to State requirements. This is in the budget. The Engineer's estimate was \$125,000.00. The bids came in at \$225,000.00 due to inflated cost vs. November of 2020.

Copy goes to Clerks when done.

**DOCUMENT 00500  
AGREEMENT**

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**PART 1    GENERAL**

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**1.1    CONTRACTOR**

- A.    Name: Broken Arrow Inc.
- B.    Address: 8960 Clinton Landing Road
- C.    City, State, Zip: Lake Point, UT 84074
- D.    Telephone: 801-355-0527
- E.    Facsimile: 801-252-7501

**1.2    OWNER**

- A.    OWNER: **Tooele County**, a COUNTY of the State of Utah, 47 South Main Street Tooele City, 84074

**1.3    CONSTRUCTION PROJECT**

- A.    Project Name:  
                    **2021 Roads Shop Storm Drain Project**

**1.4    PROJECT MANAGER**

- A.    Jed Bell, Roads Department Director is the OWNER'S representative and agent for this Construction Contract who has the rights, authority and duties assigned to the PROJECT MANAGER in the Contract Documents.

**1.5    CONTRACT DOCUMENTS**

- A.    The Contractor agrees to perform the work pursuant to the contract documents which include; the Bid Documents, Agreement, Agreement Supplement, General Conditions, Supplementary Conditions, Specifications, Standard Specifications, Drawings, Standard Plans together with all Modifications issued pursuant to

Article 3.3 of the General Conditions of the APWA Manual of Standard Specifications, 2017 Edition, published by Utah T2 Center, copyright Utah Chapter APWA.

- B. All provisions of the APWA Manual of Standard Specifications, 2017 Edition and Manual of Standard Plan, 2017 Edition both published by the Utah Chapter of American Public Works Association are hereby made a part of the Contract Documents by reference. The publications may be purchased separately from the Utah Technology Transfer Center, Utah State University 8205 Old Main Hill, Logan UT 84322-8205.
- C. Any conflicts, between the special provisions (technical specifications), drawings and other provisions or documents contained in these Contract Documents versus provisions contained in the Manual of Standard Specifications, 2017 Edition and Manual of Standard Plan, 2017 Edition published by the Utah Chapter of the American Public Works Association, shall be resolved in favor of the special provisions (technical specifications), drawing, and other provisions contained in these Contract Documents.
- D. All references to "General Conditions" or "Standard General Conditions" are to Section 00 72 00 of the Manual of Standard Specifications, 2017 Edition published by the Utah Chapter of the American Public Works Association.

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## **PART 2 TIME AND MONEY CONSIDERATIONS**

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### **2.1 CONTRACT PRICE**

- A. The Contract Price includes the cost of the Work specified in the Contract Documents, plus the cost of all bonds, insurance, permits, fees and all charges, expenses or assessments of whatever kind or character.
- B. The Schedules of Prices awarded from the Bid Schedule are as follows:
  - 1. Bid Schedule
- C. An Agreement Supplement (Document 00505) *is not* attached to this Agreement.
- D. Based upon the above awarded schedules and the Agreement Supplement (if any), the Contract Price is:       \$224,142       dollars and   28   cents.



## **2.2 CONTRACT TIME**

- A. The work shall be substantially completed forty-five (45) days from date of notice to proceed.
- B. The OWNER anticipates that a Notice to Proceed will be given on the following date, but reserves the right to change such date:

Anticipated date of Notice to Proceed: November 15 , 2021

## **2.3 PUNCH LIST TIME**

- A. The Work will be complete and ready for final payment within fifteen (15) days after the date CONTRACTOR receives PROJECT MANAGER'S Final Inspection Punch List unless exemptions of specific items are granted by PROJECT MANAGER in writing or an exception has been specified in the Contract Documents.
- B. Permitting the CONTRACTOR to continue and finish the Work or any part of the Work after the time fixed for its completion, or after the date to which the time for completion may have been extended, whether or not a new completion date is established, shall in no way operate as a waiver on the part of the OWNER of any of OWNER'S rights under this Agreement.

## **2.4 LIQUIDATED DAMAGES**

- A. **Late Completion:** Time is the essence of the Contract Documents. CONTRACTOR agrees that OWNER will suffer damage or financial loss if the Work is not completed on time or within any time extensions allowed in accordance with Part 12 of the General Conditions (Document 00 72 00). CONTRACTOR and OWNER agree that proof of the exact amount of any such damage or loss is difficult to determine. Accordingly, instead of requiring any such proof of damage or specific final loss for late completion, CONTRACTOR agrees to pay the following sums to the OWNER as liquidated damages and not as a penalty.
  - 1. Late Contract Time Completion: Five Hundred Dollars (\$500.00) for each day or part thereof that expires after the Contract Time until the Work is accepted as Substantially Complete as provided in Article 14.5 of the General Conditions.
  - 2. Late Punch List Time Completion: 50% of the amount specified for Late Contract Time Completion for each day or part thereof if the Work remains incomplete after the Punch List Time.

- B. **Work Sequence Completion:** Time is the essence of sequenced work. If a work sequence is specified, then for each day or part thereof that exceeds the specified time and until PROJECT MANAGER determines such work sequence is Substantially Complete, the CONTRACTOR agrees that the following sums will be withheld from final payment by the OWNER as liquidated damages and not as a penalty.
- C. **Survey Monuments:** No land survey monument shall be disturbed or removed until PROJECT MANAGER has been properly notified and the PROJECT MANAGER'S surveyor has referenced the survey monument for resetting. The parties agree that upon such an unauthorized disturbance, it is difficult to determine the damages from such a disturbance. The parties also agree that CONTRACTOR will pay as liquidated damages the sum of one thousand dollars (\$1,000.00) to cover such damage and expense.
- D. **Interruption of Public Services:** No interruption of public services shall be caused by CONTRACTOR, its agents or employees, without the PROJECT MANAGER'S prior written approval. OWNER and CONTRACTOR agree that in the event damages stipulated above shall not be deemed to be a limitation upon OWNER'S right to recover the full amount of such damages. Because of the difficulty in determining the OWNER'S damages resulting from an unapproved interruption, the parties agree payment of the following liquidated damages to OWNER on a per day basis does not relieve CONTRACTOR from any liability for such a utility interruption to third parties.

| Utility        | Maximum Interruption<br>of Service | Liquidated<br>Damages for each<br>Day or Part<br>Thereof. |
|----------------|------------------------------------|---|
| Water          | 12 Hours                           | \$1000 / day  |
| Power          | 24 Hours                           | \$1000 / day  |
| Sanitary Sewer | 24 Hours                           | \$1000 / day  |

In the event that any third party successfully makes a claim against OWNER for such interruption, CONTRACTOR shall be responsible for payment of claims.

- E. **Deduct Damages from Moneys Owed CONTRACTOR:** OWNER shall be entitled to deduct and retain liquidated damages out of any money that may be due or become due to the CONTRACTOR. The extent that the liquidated damages exceed any amounts that would otherwise be due to the CONTRACTOR, the CONTRACTOR shall be liable for such amounts and shall return such excess to the OWNER.



## 2.5 RETAINAGE

- A. **Retainage is OWNER'S Option:** OWNER may, in its sole discretion, retain five percent (5%) of the value of all Work done and materials or equipment supplied as part security for the fulfillment of the Construction Contract by the CONTRACTOR. If, in PROJECT MANAGER'S opinion, the Work is proceeding in accordance with CONTRACTOR'S approved progress schedule, and all progress schedule submittals are current and up to date, and all required payrolls, shop drawings, and miscellaneous submittals are current and up to date, the OWNER may choose not to withhold retainage.
1. **Amount to be Retained:** If at any time after 50% of the Work has been completed, and \$25,000 or more has been retained, OWNER may make any of the remaining progress payments in full, if, in the OWNER'S sole discretion, the Work is progressing satisfactorily. OWNER may pay monthly to the CONTRACTOR while carrying on the Work, the balance not retained as aforesaid, after deducting there from all previous payments and all sums to be kept or retained under the provisions of the Construction Contract. No such estimate of payment shall be required to be made when, in judgment of the PROJECT MANAGER, the Work is not proceeding in accordance with the Contract Documents or when in PROJECT MANAGER'S judgment the total value of the Work done since the last estimate amounts to less than three hundred dollars (\$300.00). No such estimate or payment shall be construed to be an acceptance of any defective or improper Work or materials.
  2. **Reducing the Retainage:** As the Work nears completion and solely at the PROJECT MANAGER'S discretion, the OWNER may reduce the retainage to an amount more in line with the Work actually remaining.
  3. **Retainage Held Until Final Payment:** The OWNER reserves the right to retain all amounts previously withheld or due the CONTRACTOR, including liquidated damages, until all Punch List items are complete. However, at PROJECT MANAGER'S sole option, PROJECT MANAGER may authorize the release of up to all retained amounts except any liquidated damages and double PROJECT MANAGER'S best estimate of the CONTRACTOR'S cost to complete all remaining Punch List items.
- B. **Interest:** Except when CONTRACTOR is required to submit a Waiver of Interest Affidavit and except for money retained for items not provided or installed in accordance with the Contract Documents, any money retained by the OWNER will be placed in an interest bearing account accruing at a rate of .5% below the state pool rate held by the OWNER as of the date such money would have otherwise been payable. The interest accrued thereon will be due and payable to the CONTRACTOR within 30 days after the retained monies are paid.

## 2.6 PAYMENT PROCEDURES

- A. **Progress Payments:** CONTRACTOR shall submit Applications for Payment in accordance with Part 14 of the General Conditions (Document 00 72 00). Payment shall not become due or payable for any contract item not provided or installed by CONTRACTOR.
1. **Withholding Payment:** OWNER reserves the right to withhold payment from CONTRACTOR for non-compliance with any provision of the Contract Documents.
  2. **Price Adjustments:** OWNER will consider making partial payment to the CONTRACTOR for certain non-conforming work in advance of any negotiated settlement reached between the CONTRACTOR and the OWNER, provided the CONTRACTOR requests in writing that this be done. CONTRACTOR agrees that any such payments made by the OWNER are "payments in advance" and that any money that becomes due when the final settlement is negotiated will not constitute payments "withheld" or "retained" under State Law.
- B. **Final Payment:** After completion of all Work and Punch List items, OWNER shall pay the Contract Price due after deducting there from all previous payments, unit price quantity adjustments, penalties, liquidated damages, and other amounts to be retained. All prior progress payments shall be subject to correction in the final payment. The final payment shall not be due and payable until the expiration of 30 days from approval of the request for final payment of CONTRACTOR by the OWNER'S finance department.
1. **Submittal:** Final payment shall not be made until the CONTRACTOR has delivered and PROJECT MANAGER has accepted all submittals specified in Article 14.8 of the General Conditions (Document 00 72 00).
  2. **OWNER Released From Claims:** The payment and acceptance of the final Contract Price due and the adjustment and payment for any Work done in accordance with any alterations of the same, shall release the OWNER from any and all claims of CONTRACTOR on account of Work performed under the Contract Documents or any modification thereof, except for those claims specifically agreed to as reserved and unresolved by the OWNER.

## 2.7 EXTRA WORK

- A. No money will be paid to the CONTRACTOR for any additions, deletions or revisions in the Work as stipulated in Article 10.1 of the General Conditions (Document 00 72 00), unless a Contract Modification for such has been made in writing and executed by the OWNER and CONTRACTOR.



## **2.8 WARRANTY AND GUARANTEE**

- A. CONTRACTOR hereby warrants that all work installed, and every part thereof shall remain in good condition and free from all defects due to faulty materials or workmanship during the warranty period. CONTRACTOR shall promptly make all repairs, corrections, and/or replacements for all defects in workmanship, materials, and equipment during the warranty period, without charge or cost to the OWNER. OWNER reserves the right to inspect, photograph, or televise the work and notify CONTRACTOR of the conditions of the work. CONTRACTOR shall thereupon immediately make any repairs or corrections required by this section and Article 6.16 of the General Conditions of the Manual of Standard Specifications, 2017 Edition, published by Utah T2 Center, copyright Utah Chapter APWA. "Warranty Period" means a period of one (1) year beginning on the date on which the OWNER certifies the work complete.

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## **PART 3 COVENANTS**

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### **3.1 ASSIGNMENT NOT BINDING WITHOUT WRITTEN CONSENT**

- A. OWNER and CONTRACTOR agree no assignment of any right or interest in the Contract Documents will be made without the written consent of the OWNER and the CONTRACTOR. No assignment will release or discharge the OWNER or the CONTRACTOR from any duty or responsibility under the Contract Documents unless specifically stated to the contrary in any written consent to an assignment.
- B. CONTRACTOR shall make no assignment of money that is due without the OWNER'S written consent (except to the extent that the effect of this restriction may be limited by Law or Regulation).

### **3.2 BINDING TERMS**

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assign and legal representatives to the other party hereto, its partners, successors, assign and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

### **3.3 INDEMNIFICATION**

- A. Provisions concerning indemnification are set forth in Article 6.17 of the General Conditions (Document 00 72 00).



### 3.4 DISPUTE RESOLUTION

#### A. In General:

1. Unless a decision shall be held by an appropriate court of law to have been procured by fraud or to be arbitrary and capricious or so grossly erroneous as necessarily to imply bad faith, any factual decision made under this Article shall be final and binding in any suit or action arising under this Construction Contract, including any actions by CONTRACTOR or others against OWNER or any of OWNER'S agents, consultants, or employees.
2. Compliance with provisions of this Article shall be a condition precedent prior to any legal action by the CONTRACTOR or any of CONTRACTOR'S Subcontractors and Suppliers against OWNER or any of OWNER'S agents, consultants, or employees.
3. The provisions of this Article shall not preclude or limit judicial review of issues of law.
4. Ambiguities in or between Contract Documents shall be construed in favor of the OWNER.

#### B. Disputes Not Related to the Guarantee of the Work: Any dispute arising under the Construction Contract concerning a question of fact, not related to the guarantee of the Work (Article 13.1 of the General Conditions (Document 00 72 00)), which is not disposed of by contract modification shall be decided pursuant to the following procedure:

1. Any decision by PROJECT MANAGER interpreting the requirements of the Contract Documents may be appealed in writing to the PROJECT MANAGER. The PROJECT MANAGER'S decision shall be reduced to writing and a copy shall be mailed or otherwise furnished to the CONTRACTOR. The decision of PROJECT MANAGER shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the CONTRACTOR mails or otherwise furnishes to PROJECT MANAGER a written appeal to the County PROJECT MANAGER.
2. Within 15 days from the receipt of any such appeal, the County PROJECT MANAGER shall issue a decision in writing and mail or otherwise furnish a copy thereof to the CONTRACTOR. The decision of the County PROJECT MANAGER shall be final and conclusive unless, within 15 days from the date of receipt of such decision, the CONTRACTOR mails or otherwise furnishes to the County PROJECT MANAGER a written appeal to the Standing Appeals and Dispute Committee.
3. The Standing Appeals and dispute Committee shall consist of the County Attorney, Roads Department Director and County Manager, or their designees.
4. The County PROJECT MANAGER issuing the decision appealed from shall present the department's case prior to deliberations of the Committee, otherwise the County PROJECT MANAGER shall be disqualified and excluded from the Committee's decision process.

5. The decision of said Committee shall be rendered in writing within 15 days from receipt of the appeal and mailed or otherwise delivered to the CONTRACTOR.
  6. The decision of said Committee shall be the final binding interpretation of the facts that are the subject of the appeal.
- C. Disputes Related to the Guarantee: Except as otherwise provided by contract modification, any dispute concerning a question of fact involving or arising out of the guarantee required by the Contract Documents (Article 13.1 of the General Conditions (Document 00 72 00)), which is not disposed of by contract modification shall be decided pursuant to the provisions of Paragraph 3.4B above, except that the initial factual decision shall be issued in writing by the PROJECT MANAGER, together with the County PROJECT MANAGER. Any appeal there from shall be made within 15 days directly to the Standing Appeals and Dispute Committee where such disputes shall be governed by Paragraphs 3.4B.3 to 3.4B.6 above.
- D. Work During Appeal: Notwithstanding the pendency of any protest or appeal provided above, CONTRACTOR shall, if so ordered by PROJECT MANAGER, proceed with the Work under the Contract Documents according to PROJECT MANAGER'S direction and according to the decision on any appeal. The existence of a claim or protest shall not excuse CONTRACTOR from the requirements of the Contract Documents, including, but not limited to, the Contract Time.
- E. Appeals of Termination or Suspension: Any decision of OWNER to terminate or suspend the Work shall not be subject to the provisions of this Article.

### **3.5 ATTORNEYS FEES**

- A. In the event there is a failure to perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in house or outside counsel), either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party, and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

### **3.6 CHOICE OF LAW**

- A. This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah. This Agreement shall be further governed by County ordinances in effect at the time of the execution of this Agreement. However, the parties expressly acknowledge that any subdivision or other development regulations enacted after the execution of this Agreement, which are



reasonably necessary to protect the health, safety, and welfare of the citizens of County, shall also apply to the subdivision or development that is the subject of this Agreement.

### **3.7 SEVERABILITY**

- A. If a court of competent jurisdiction declares any portion of this Agreement invalid, the remaining portions shall not be affected thereby, but shall remain in full force and effect.

### **3.8 INTEGRATION**

- A. This Agreement, including all Contract Documents as defined herein, embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter herein.

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## **PART 4 EXECUTION**

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### **4.1 EFFECTIVE DATE**

- A. OWNER and CONTRACTOR executed this Agreement and declared it in effect as of the 19<sup>th</sup> day of November, 2021.

#### 4.2 CONTRACTOR'S SUBSCRIPTION AND ACKNOWLEDGEMENT

- A. Type of organization: Corporation  
(corporation, partnership, individual, etc.)
- B. If CONTRACTOR is a corporation, attach a corporate resolution evidencing CONTRACTOR'S authority to sign.
- C. CONTRACTOR'S Utah license number: 240281-5501
- D. CONTRACTOR'S signature: *D. Scott Maxfield*
- E. Please print name here: D. Scott Maxfield
- F. Title: Secretary/Treasurer

- G. Corporate Acknowledgement:  
In the County of Tooele, State of UT, on the  
19th day of November, 2021, personally  
appeared before me D. Scott Maxfield (name of person), whose identity is  
personally known to me or proved to me on the basis of satisfactory evidence, and  
who affirmed that he/she is the Secretary/Treasurer (title) of  
Broken Arrow, Inc. (name of corporation), a corporation, and that said  
document was signed by him/her in behalf of said corporation by authority of its  
bylaws or of a Resolution of its Board of Directors, and he/she acknowledged to  
me that said corporation executed the same.



Notary's Seal

*Stefanie B. Quinn*  
Notary Public Signature

*Tooele, Utah*  
Residing at

*March 9, 2022*  
My Commission expires:

- H. Agent for Service of Process:
1. Agent's signature: \_\_\_\_\_
  2. Agent's title: \_\_\_\_\_
- I. Corporate Authority: At the request of the OWNER, evidence satisfactory to the OWNER shall be submitted which shows the person executing this Agreement has the required authority to execute this Agreement.



4.3 OWNER'S SUBSCRIPTION AND ATTESTATION

OWNER'S signature: Sam A. Welch  
(Signature of County Manager or designee)

Acknowledgement  
State of Utah )

County of Tooele ) ss.

The foregoing instrument was acknowledged before me this 15 day of December, 20 21.

By

(Person acknowledging, title and representative capacity, if any).

Notary's Signature

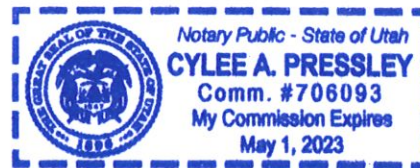
Cylee A. Pressley

Residing at

47 S. Main Street  
Tooele, UT. 84074

My commission expires:

May 1, 2023



Notary's Seal

**END OF DOCUMENT**

APPROVED AS TO FORM:

Colin Winchester 12/08/2021

Colin R. Winchester  
Deputy Tooele County Attorney





## Registered Principals

| Name                         | Type        | City      | Status |
|------------------------------|-------------|-----------|--------|
| BROKEN ARROW<br>INCORPORATED | Corporation | LAKEPOINT | Active |

| Position         | Name              | Address                 |                        |
|------------------|-------------------|-------------------------|------------------------|
| Registered Agent | STEPHEN G. BUNN   | 8960 N HWY 40           | LAKEPOINT UT<br>84074  |
| Vice President   | JARED S BUNN      | 877 E 420 S             | TOOELE UT 84074        |
| Director         | STEPHEN G BUNN    | 66 W 520 S              | TOOELE UT 84074        |
| President        | STEPHEN G BUNN    | 66 W 520 S              | TOOELE UT 84074        |
| Treasurer        | D. SCOTT MAXFIELD | 8790 LAKESHORE<br>DRIVE | LAKE POINT UT<br>84074 |
| Secretary        | D. SCOTT MAXFIELD | 8790 LAKESHORE DR       | LAKE POINT UT<br>84074 |
| Vice President   | STEFANIE B QUINN  | 688 PIONEER AVE         | TOOELE UT 84074        |

If you believe there may be more principals, click here to [View Filed Documents](#)

Business Name: