

PRISONERS PUBLIC WORKS PROJECT CONTRACT

This contractual agreement (hereinafter, **Contract**) is entered into by, and between, the Oklahoma Department of Corrections (hereinafter, Department) and the undersigned Oklahoma governmental agency or political subdivision, _____ (hereinafter, **Public Agency**), upon written request by a majority of the board of county commissioners, the governing body of a municipality, an agency of the State of Oklahoma or of the United States, any subdivision thereof, or any community action agency for prisoners to be assigned to a Public Works Project. The written request is attached to this agreement and incorporated by reference.

This Contract is authorized by 57 O.S. § 215 et seq. entitled "The Prisoners Public Works Act."

For and in consideration of the following terms, conditions, and covenants, the parties herein agree as follows:

1. The Public Agency covenants that it is a public entity authorized under 57 O.S. § 216(2) to request a Public Works Project and the Public Works Project will meet the requirements of the Prisoners Public Works Act.
2. The term of this Contract will be for a period beginning on _____ and ending on June 30, _____.
3. The prisoners assigned to the Public Works Project under this Contract will be prisoners from the following correctional center: _____.
4. The Public Agency has requested ____ (#) prisoners to be assigned to the Public Works Project and the Department will generally make said number of prisoners available to the Public Agency.
5. The prisoners assigned to this Public Works Project will have the following responsibilities:

The above explanation should include a brief description of the Public Works Project indicating the location and type of work required. If more room is required, additional pages may be attached to this Contract.

6. The Public Agency will also provide work orders, job duties/assignments, any training to the prisoners and will provide a safe working environment. The Public Agency will furnish all materials and tools necessary for the Public Works Project unless otherwise agreed.

7. The Public Agency agrees to use prisoners assigned to the Public Works Project on public property only, except that prisoner labor may be used on private property for a public purpose. Labor conducted on private property must be approved by the Department prior to commencement of any work on private property. Public purpose is hereby defined as a purpose generally affecting the public good of the inhabitants of the state or political subdivision. The prisoners will be utilized as a group for this purpose and not as individuals.
8. The Public Agency will not use the prisoners to provide personal services for private benefit or to supervise other prisoners. The Public Agency will allow the Department to conduct unscheduled periodic visits to the Public Works Project work site to monitor the prisoners and contract compliance.
9. The Public Agency will, upon request, relinquish any assigned prisoner to the custody of the Department.
10. For community placement prisoners, the Public Agency agrees to cooperate and provide prisoner counts close supervision of the prisoner's whereabouts. The supervisor will visually observe each prisoner at least every hour, and a formal count will be conducted and documented in a log book every two (2) hours.
11. For minimum security prisoners, the Public Agency agrees that the supervisor will visually observe each prisoner at least every half hour, and that a formal count will be conducted and documented in a log book every two (2) hours.
12. The Public Agency will immediately notify the Department and the local law enforcement agency of any missing or unaccounted for prisoner or if the Public Agency believes a prisoner has escaped.
13. The Public Agency will immediately report to the Department any guideline or rule violation, as provided for in Attachment F of OP-090106.
14. The Public Agency agrees to pay to the Department the base cost plus ten percent. The base cost may comprise the following categories:
 - a. The cost of transportation of the prisoners to and from the project;
 - b. The cost of lodging and food for the prisoners and correctional personnel assigned to the project;
 - c. The cost of guarding the prisoners;
 - d. The cost of all tools and materials furnished by the Department,
 - e. The cost of the salaries of the assigned prisoners; and
 - f. Miscellaneous. Specify: _____
15. The Department shall invoice the Public Agency every month by electronic mail (e-mail) to the e-mail address provided in Paragraph 35, and the

- Public Agency shall pay such invoices within thirty (30) days from the date of the invoice. Any invoice unpaid more than forty-five (45) days shall accrue interest at the rate established in accordance with Section 34.72 of Title 62 of the Oklahoma Statutes beginning on the thirtieth (30th) date from the date of the invoice. Additionally, if any invoice is not paid within sixty (60) days, the Public Agency will not be permitted to receive prisoners under this contract until all outstanding invoices are paid in full.
16. The Department will not, unless otherwise agreed, provide the transportation to and from the work site of the prisoners assigned to the Public Works Project.
 17. The Department will provide lunches to the prisoners at a cost of \$1.25 per prisoner per lunch to the Public Agency, unless otherwise agreed.
 18. No prisoner assigned to a Public Works Project will be considered an employee of the requesting Public Agency, the Department, or the State of Oklahoma.
 19. The Department will have the ultimate responsibility for the security of the prisoners.
 20. The director of the Department or his designee will, at all times during the term of this Contract, have full jurisdiction and authority, to include immediate access, over the discipline and control of the prisoners performing work on the Public Works Project. Unsatisfactory job performance will be documented and reported to the Department by a representative of the Public Agency.
 21. The prisoners, while assigned to the Public Works Project, will, for the purpose of punishment for escape, be deemed to be on trusty status and will be under the custody and control of the Department. The limits of the place of confinement are extended under the special conditions of Public Works Project pursuant to 57 O.S. § 510.1 (A) (4).
 22. The Department will select and assign eligible prisoners to work for the Public Agency. The prisoners, while assigned to the Public Works Project, will be exempt from the provisions of the Worker's Compensation Act, (85A O.S. § 1 et seq.).
 23. The Department will be responsible for the cost of medical and dental health care needs of the prisoners while assigned to the Public Works Project, including emergencies while assigned to the public works project, unless otherwise provided for in this Contract.
 24. The Public Agency will be responsible to reimburse the Department for the cost of any required outside medical and/or dental care (including emergency care), which will include the cost of emergency transportation,

- if a prisoner assigned to the Public Works Project is injured while performing work for the Public Agency and the injury occurred as a result of the intentional, reckless, or negligent conduct of an employee or agent of the Public Agency.
25. The Public Agency will not allow any prisoner to operate or use any type of equipment unless and until the Public Agency has fully trained the prisoner in the proper and safe use of the equipment, and has documented records to support said training. Training associated with the use of lawn equipment; power tools and hand tools must meet OSHA and Department of Labor standards, and this training can be conducted without the Department's review of the curriculum. Training associated with the use of any heavy equipment e.g., backhoes, dozers, tractors and implements, frontend loaders, excavators, skid loaders etc. will require the Public Agency to provide the training curriculum to the Department for approval prior to the Public Agency training and allowing inmates to use this equipment. Under no circumstances will the Public Agency allow a prisoner to operate any equipment which has had the manufacturer's safety devices modified or removed, nor will the Public Agency allow any prisoner to operate any dangerous or unsafe equipment. The Public Agency will not allow a prisoner to operate any equipment without first providing and requiring the prisoner to wear protective equipment in accordance with Occupational Safety and Health Administration standards when operating any equipment. The Public Agency will also not allow a prisoner to operate any motor vehicle upon the public roadways at any time.
 26. In the event a prisoner is injured while operating equipment or motor vehicle in violation of this Contract, the Public Agency will be responsible to reimburse the Department for the cost of any and all required outside medical and/or dental care (to include emergency care), which will include the cost of emergency transportation to and from the outside medical provider, and the Public Agency will be liable for all other damages resulting from said violation.
 27. The Department will provide the Public Agency with copies of relevant Department policies and operations procedures that are applicable, as well as the training and orientation required for proper implementation and security.
 28. The Public Agency, unless otherwise agreed, will provide work shifts of no longer than eight (8) working hours and will utilize prisoners for no more than eight (8) hours per shift. The normal working hours will be between 0700 and 1800 hours each working day. Any additional or different work shifts required will necessitate approval by the warden or administrator of the prisoner's correctional facility and be documented and attached as an addendum to this Contract.

29. Either party may immediately terminate this Contract for the failure of the other party to perform or comply with the terms and conditions contained herein. Any damages will be authorized by law in a court of competent jurisdiction, except attorney's fees and related legal costs, which will be borne by each party separately. Both parties, in determining failure to perform under this Contract, will consider any mitigating circumstances.
30. In the event a bona fide dispute or a conflict of interest arises between the parties, which cannot be resolved through reasonable diligence, either party may request mediation under the Oklahoma Dispute Resolution Act, 12 O.S. § 1801 et seq., as amended. Such request will not be unreasonably refused by the other party. The parties agree that the cost of this process will be borne separately by each party. Any dispute will not affect the performance requirements and duties of this Contract. The Contract will remain in full force and effect unless otherwise terminated or agreed to between the parties.
31. The Public Agency is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of the Contract. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
32. If any provision, clause, or paragraph of this Contract or any document incorporated by reference is determined to be invalid by a court of competent jurisdiction, such determination will not affect the other provisions, clauses, or paragraphs of this Contract. The provisions, clauses, or paragraphs, and any documents incorporated by reference are declared severable.
33. This Contract will be governed by the laws of the State of Oklahoma, with the venue for any action to be in Oklahoma County.
34. Either party may terminate this Contract, in whole or in part, for convenience, if it is determined that termination is in its best interest. The terminating party shall deliver to the other party a written notice of termination for convenience specifying the terms and effective date of termination. The Contract termination date shall be a minimum of thirty (30) days from the date the notice of termination is issued by the terminating party.
35. All notices required in this Contract will either be mailed (certified with return receipt requested) or emailed to the addresses of the parties set forth below:

For the Department:

For the Public Agency:

David A. Cincotta
General Counsel
3400 N. Martin Luther King Ave.
Oklahoma City, OK 73111
david.cincotta@doc.ok.gov

(Include email address)

- 36. This Contract may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. This Contract may be delivered by e-mail.
- 37. The representative executing this Contract on behalf of the Public Agency hereby warrants that said representative has the authority to execute and bind the Public Agency.
- 38. The representative executing this Contract on behalf of the Public Agency certifies that the prisoner labor shall not displace any employment opportunities for private citizens of the State of Oklahoma and that the Public Agency has insufficient funds available to perform the work set forth in this Contract.
- 39. The Public Agency will not allow an employee or agent of the Public Agency to direct, manage or supervise a prisoner assigned to work on behalf of the Public Agency until the employee or agent has completed all training required by the Department’s Operating Procedure OP-090106.
- 40. The Public Agency agrees that prisoners shall not be permitted to work in or around any area in which minor children are located.
- 41. INDEMNIFICATION
 - a. Without waiving any defense or immunity, and subject to the Oklahoma Tort Claims Act, the Public Agency agrees to bear all expenses, fines, judgments, and cost(s), including its own attorney fees, which may arise from any and all acts of its officials, agents, and employees in relation to the performance or nonperformance of the Agreement.
 - b. Without waiving any defense or immunity, and subject to the Oklahoma Tort Claims Act, the Department agrees to bear all expenses, fines, judgments, and cost(s), including its own attorney fees, which may arise from any and all acts of its officials, agents, and employees in relation to the performance or nonperformance of the Agreement.

42. PRISON RAPE ELIMINATION ACT (§115.17 and §115.77)

- a. Any sexual assault or sexual misconduct or attempted sexual assault or sexual misconduct between the Public Agency, its employees, agents, or representative and a prisoner is expressly forbidden.
- b. In addition, by entering into this Contract with Department, Public Agency attests that no employee, agent or representative of the Public Agency who may have direct contact with the prisoners while performing the requirements of this contract has:
 - i. Engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);
 - ii. Been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 - iii. Been civilly or administratively adjudicated to have engaged in the activity described above. Any employee or agent of Public Agency who engages in sexual abuse will be prohibited from contact with prisoners and will be reported to law enforcement agencies and to relevant licensing bodies.
- c. Any violation of this provision will be reported to law enforcement agencies and to relevant licensing bodies and will result in the filing of criminal charges as warranted. The Department may also terminate the contract immediately when violations are found.

43. Signatures:

Department:

Approved By: _____ Date: _____
 Name: _____
 Title: _____

 General Counsel or designee

Public Agency:

Approved By: _____ Date: _____
 Name: _____
 Title: _____

PRISONERS PUBLIC WORKS CONTRACT OKLAHOMA DEPARTMENT OF CORRECTIONS OKLAHOMA DEPARTMENT OF TRANSPORTATION			
DATE:			
\$		A.	The cost of transportation of the prisoners to and from the project.
\$		B.	The cost of lodging and food for the prisoners and correctional personnel assigned to the project.
\$		C.	The cost of supervising the prisoners.
\$		D.	The cost of all tools and materials furnished by the Department.
		E.	The cost of the salaries of the assigned prisoners in accordance with their level assignment.
\$		F.	Other miscellaneous. (See addendum)
\$		SUBTOTAL	
		Plus 10%	
\$		TOTAL COST PLUS TEN PERCENT TO BE BILLED MONTHLY	
Oklahoma Department of Corrections		Agency Representative	
<p>These costs are provided for in the Prisoners Public Works Act, and if there are none, please put a zero in the line. Any miscellaneous costs may be listed separately in an addendum.</p>			