

## CONSTRUCTION MANAGEMENT-AT-RISK AGREEMENT

This Construction Management-at-Risk Agreement (“Agreement”), by and between the City of Lawton, Oklahoma, a municipal corporation, hereinafter referred to as “Owner,” or “City”, and

CMS Willowbrook, Inc., hereinafter also called “Construction Manager” (also hereinafter referred to as “Party” individually or “Parties” collectively), shall become effective upon the date this Agreement has been signed by both parties (“Effective Date”).

### ARTICLE I PROJECT

1.01 Owner intends to construct the City Hall Renovation, EN2004A (the “Project”) for which Owner intends to achieve Substantial Completion (as defined in Owner’s Uniform General and Supplementary Conditions) for all Stages of construction beginning on or before To be Determined for the City Hall Renovation, EN2004A project. The Contract Time and the date by which Substantial Completion should be achieved will be established when and if Owner accepts Construction Manager’s Guaranteed Maximum Price proposal. Details for the Project are also included in the CMAR Scope in City of Lawton RFQ dated November 10, 2021.

**1.02 FOR EACH CONSECUTIVE DAY AFTER THE COMPLETION PERIOD SET FORTH IN A GUARANTEED MAXIMUM PRICE PROPOSAL EXECUTED BY THE PARTIES THAT ANY WORK, INCLUDING THE CORRECTION OF DEFICIENCIES FOUND DURING THE FINAL TESTING AND INSPECTION, IS NOT COMPLETED, THE AMOUNT OF To be determined upon completion of 100% Construction Documents DOLLARS, (\$ TBD ) WILL BE DEDUCTED FROM THE MONEY DUE OR BECOMES DUE THE CONSTRUCTION MANAGER, NOT AS A PENALTY BUT AS LIQUIDATED DAMAGES REPRESENTING THE PARTIES’ ESTIMATE AT THE TIME OF CONTRACT EXECUTION OF THE DAMAGES WHICH THE OWNER WILL SUSTAIN FOR LATE COMPLETION.**

### ARTICLE II DEFINITIONS

2.01 Certain Definitions:

- (a) Contract Documents: This Agreement, includes Owner’s Uniform General and Supplementary Conditions, all Addenda issued prior to the Effective Date, the Project Manuals developed for the construction of the Project or a portion thereof, all documents required thereunder, and the Drawings and Specifications developed by MA+ Architecture, LLC
- (b) The Contract Documents form the Contract between Owner and Construction Manager. Construction Manager shall perform all of its services and construct the Work (as defined below) pursuant to the entire Contract. Duties and obligations of Construction Manager which are described in this Agreement may be expanded or further defined by additional 1 provisions of the other Contract Documents. “Construction Manager” shall be substituted for “Contractor” or “General Contractor” in Owner’s Uniform General and Supplementary Conditions and Division 1 Specifications.

- (c) Construction Cost Limitation: The cost limit for construction which must not be exceeded as a result of the design of the Design Consultant, and which may be stipulated in a contract with a Design Consultant.
- (d) Construction Phase: The implementation and execution of the construction work required by the Contract Documents. The construction of the Project may be divided into different stages each with different dates for implementation and completion (referred to as a “Stage”).
- (e) Project Team: The Owner, Construction Manager, Design Consultant(s), any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from time to time by Owner.
- (f) Day: The calendar day unless otherwise specifically designated.
- (g) Design Consultant: Licensed professionals, or firms employing such licensed professionals, engaged by Owner as independent consultants for design of all or a portion of the Project Improvements and to prepare drawings and specifications for the construction of the Project (the “Drawings and Specifications”). More than one such professional or firm may be employed by Owner. (All such professionals or firms, regardless of number, may be referred to in the singular herein.)
- (h) Final Completion: As defined by Owner’s Uniform and Supplementary General Conditions.
- (i) Pre-construction Phase: The programming, schematic design, design development, construction documents, and bidding phases.
- (j) Preliminary Project Cost (“PPC”): The total estimated cost of all project development, including design, construction, and other associated costs, which is established prior to the commencement of design.
- (k) Project Construction Budget (“PCB”): The budget established for the site preparation and construction of all the Project Improvements and facilities relating to and being a part of the Project, which includes the Construction Cost Limitation and other costs specified by Owner.
- (l) Project Improvements: All Project facilities requiring construction, including all preparatory matters prior to construction, such as site preparation.
- (m) Standards and Standard Specifications: The construction and design requirements and standards of the Owner, and various building and life safety codes as specified by Owner which are hereby incorporated by reference.
- (n) Subcontractors: All trade contractors, separate contractors, and subcontractors entering into contracts (“Subcontracts”) with the Construction Manager for the performance of the Work. The relationship between the Construction Manager and the Subcontractors shall be that of a general contractor to its subcontractors unless otherwise approved in advance in writing by Owner, or except when Owner enters into a separate contract directly with a Subcontractor.
- (o) Substantial Completion (date of): As defined by Owner’s Uniform General and Supplementary General Conditions.
- (p) Total Project Cost (“TPC”): The total budget established for the Project by OWNER at the end of the design development phase (subject to subsequent modification by Owner), which includes but is not limited to professional services costs, Construction Manager’s costs, the costs of the General Conditions items, furniture, fixtures and equipment costs, landscaping costs, moving costs, and other miscellaneous costs.
- (q) Work: The provision of all services, labor, materials, supplies, and equipment that

are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents (as such may be modified or amended). The term “reasonably inferable” takes into consideration the understanding of the parties hereto that not every detail will be shown in the Contract Documents. The Construction Manager shall not be entitled to an increase in the Guaranteed Maximum Price (as described in section 5.01(g)) due to the absence of any detail or specification the Contractor may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner. Notwithstanding the above, the Contractor shall not be responsible for design, except incidental designing/detailing as required by the Specifications for shop drawing purposes.

### **ARTICLE III**

#### **DESIGNATION OF CONSTRUCTION MANAGER AND DUTIES**

3.01 The Owner hereby designates and appoints the Construction Manager and authorizes the Construction Manager to so act in connection with the scope of work and services set forth and described in this Agreement.

3.02 Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager’s qualifications with respect to performing its obligations hereunder, and Construction Manager’s special and unique abilities with respect to construction management. The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Construction Manager covenants with Owner to use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of Owner in accordance with Owner’s requirements and procedures, in accordance with the highest standards of Construction Manager’s profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Construction Manager warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the services required hereunder.

3.03 The Construction Manager warrants, represents, covenants, and agrees that all of the services to be performed by the Construction Manager under or pursuant to this Agreement shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project.

3.04 The Construction Manager’s duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner nor shall the Construction Manager be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Construction Manager’s skill and knowledge in performing the services required hereunder.

3.05 The Construction Manager warrants, represents, covenants, and agrees that all persons

connected with the Construction Manager directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

3.06 The Construction Manager warrants, represents, covenants, and agrees to call to Owner's attention anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Construction Manager (by the Owner or any other party) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from the Construction Manager's responsibilities or obligations hereunder in a case where such document or data is furnished or when time is of the essence unless the Construction Manager advises Owner in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes the Construction Manager to proceed in accordance with the data as originally given.

3.07 The Construction Manager warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interests of Owner.

3.08 The Construction Manager warrants, represents, covenants, and agrees that it shall, at its own cost, make good any defects in the Construction Phase Services as soon as the Construction Manager becomes aware of such defects or is notified of such defects. Should the Construction Manager refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then the Owner shall be entitled to make good such defective services at the expense of the Construction Manager. This commitment by Construction Manager is in addition to, and not in substitution for, any other remedy for defective Services that the Owner may have at law or in equity. Construction Manager's obligations with respect to Construction Phase Services are set forth in Owner's Uniform General and Supplementary Conditions and elsewhere as may be noted.

3.09 Construction Manager warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Oklahoma, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Oklahoma, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Construction Manager has been duly authorized to act for and bind Construction Manager; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Construction Manager has been duly authorized to act for and bind Construction Manager.

3.10 Neither the execution and delivery of this Agreement by Construction Manager nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Construction Manager is bound, or any agreement by which Construction Manager is bound or to the best of the Construction Manager's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Construction Manager.

3.11 Except for the obligation of Owner to pay Construction Manager certain fees and expenses pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Construction Manager, no present or future affiliate of Owner or any agent, officer, director, employee, or Trustee of Owner, or of the components comprising the City of Lawton, or anyone claiming under Owner has or shall have any personal liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement.

**ARTICLE IV**  
**CONSTRUCTION MANAGER'S PERSONNEL AND SUBCONTRACTORS**

4.01 The Construction Manager's personnel, and the Construction Manager's associated sub-consultants, to be employed in the Project, are identified in Exhibit A. The personnel and entities identified in Exhibit A shall not be changed except with the Owner's prior written agreement, which shall not be unreasonably withheld.

4.02 When Construction Manager's Subcontractors for constructing the Work have been identified, they shall not be changed without Owner's prior written approval, which shall not be unreasonably withheld. Construction Manager shall not incur any Subcontract costs prior to issuance by Owner of a Notice to Proceed for such Work.

4.03 Construction Manager shall require in all subcontracts with Subcontractors for the performance of the work that all Subcontractors will be bound to all of the terms and conditions found in this Agreement.

**ARTICLE V**  
**CONSTRUCTION MANAGER'S SERVICES:**  
**PART 1: PRE-CONSTRUCTION PHASE SERVICES**

5.01 In implementation of the responsibilities and duties of the Construction Manager as set forth herein, the Construction Manager shall perform, in accordance with the Schedule (as defined in Section 5.01(b)), the following Pre-construction Phase Services:

- (a) General Coordination.
  - (1) Participate as a member of the Project Team in the development of the Project Facility Program if such program has not been developed prior to the Effective Date of this Agreement.
  - (2) Attend regular meetings with other members of the Project Team during the development of the design of the Project to advise them on site usage and site improvements, selection of materials, building systems and equipment, and methods of delivery of materials, systems, and equipment.  
The Construction Manager's Pre-construction Phase Services team shall attend project meetings with the Owner, Owner's representatives, and Project Architect and Design architect for workshop sessions in Lawton, Oklahoma at appropriate intervals throughout the duration of the pre-construction phase.

- (3) Provide recommendations and information to the other members of the Project Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs, temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; methods of verification for determining that the requirements and assignments of responsibilities are included in the proposed Contract Documents, and any other matters necessary to accomplish the Project in accordance with the Schedule (as defined below) and Project Construction Budget.
- (4) At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.
- (5) The Construction Manager shall prepare and keep updated throughout the Pre-construction and Construction Phases a Project Schedule to include those items described under separate contracts including equipment, furniture and furnishings, telephones, project security, property protection and life safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems and computer technology systems.
- (6) Develop and update a "Constructability Review" report which is a report resulting from frequent communication with the Project Team and which will outline items that in the Construction Manager's opinion may cause problems in the way the Project is to be constructed and which will review the overall coordination of specifications and drawings, details and discrepancies that if left unattended may result in Change Orders or claims once Project construction commences. Constructability recommendations and documentation shall be in conformance with the OWNER Uniform General Conditions.
- (7) Creation and continuous updating of a decision tracking system in a format acceptable to Owner.

(b) Scheduling.

- (1) Develop a critical path Project schedule ("Schedule") for the other Project Team members' review and the Owner's approval, that coordinates and integrates the Construction Manager's services, the Design Consultant's design, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other contractors.
- (2) Update the Schedule as is reasonably required but at least monthly to incorporate an updated, detailed listing for all activities of the Project, including, without limitation:
  - a) commencement, milestone and completion dates for Facility Program Phase, Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding/Proposals Phase, construction phasing and Project Stages;
  - b) times of commencement and completion for each Subcontractor;
  - c) required activity sequences and durations;
  - d) contract document packages, completion dates, Owner contract

- document package review periods, Project building permits acquisition time requirements, construction contract bid dates;
- e) processing of shop drawings and samples;
  - f) a recommended schedule for the Owner's purchase of materials and equipment requiring long lead time procurement, delivery dates of products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead time procurements including coordination of the Schedule with the early preparation of relevant portions of the Contract Documents by the Design Consultant.

A separate Schedule shall be prepared for each Stage and each set of bidding documents.

- (3) Provide the necessary critical path schedule control with a goal to attain the Substantial Completion of the Project on or before the date set forth hereinabove, so that the Owner can occupy and utilize the entire Project facilities on such date; and
- (4) Create and maintain the Schedule using the latest available version of the software program Microsoft Office, Excel, Fieldwire, Smartsheet or other software approved by Owner (the license and training for which shall be at Construction Manager's sole expense).
- (5) The Construction Manager shall prepare and keep updated throughout the Pre-construction and Construction Phases a Project Schedule provided in 5.01(b) (of the Agreement) to include those items described under 5.01(b) and additional detailed schedule activities which may be Owner-managed work under separate contracts including: equipment, furniture and furnishings, telephones, project security, property protection and life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems and computer technology systems.

(c) Budget and Cost Consultation.

- (1) Obtain from Owner all Project service, materials and property costs and expenses not known directly by the Construction Manager, such costs to include, without limitation, Owner's personnel costs, force account labor and special consultants.
- (2) Prepare and update a Project budget during the schematic design phase, design development phase, and construction documents phase at fifty percent (50%), seventy five percent (75%), and one hundred percent (100%) completion (for each Stage), for written approval by the Owner, such budget to include estimating, updating and reporting of all Project costs including, without limitation, construction, Design Consultant fees, fixtures, furnishings and equipment, special consultants and contractors, moving/relocation expenses, regardless of whether such costs are included in Owner's Preliminary Project Cost or Total Project Cost. The design development phase and construction documents phase estimates shall be detailed estimates derived from cost quantity surveys. Such cost quantity surveys shall be based upon unit prices for labor, materials, and overhead and profit, for each portion of the Work.

- (3) Provide throughout the duration of the Project, updates of ongoing cost and budget impact, and provide continuous cost consultation services. Prepare and be responsible for all procurement and construction cost estimates. Advise the other members of the Project Team immediately if at any time the Construction Manager has knowledge or belief that the previously established Preliminary Project Cost, Total Project Cost, or Project Construction Budget Schedule will not be met, and make recommendations to the Project Team for corrective action.
  - (4) At the completion of the Construction Contract Documents (for any Stage of the Project), update and refine a comparison of actual and projected costs to the Project Construction Budget, and in the event such actual and projected costs exceed the original Project Construction Budget, develop and implement reasonable strategies to be approved by the Owner to reduce the costs projected to be incurred during all phases of the Project.
- (d) Coordination of Design and Construction Contract Documents.
- (1) Review all plans, specifications, and other design documents during the schematic design phase, design development phase, and construction documents phase, and advise Owner on site use, foundations, systems, materials, equipment, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs, and provide recommendations to Owner without assuming Design Consultants' professional responsibility.
  - (2) Assist in development of any Special Conditions of the Construction Contract Documents, which shall be approved in writing by the Owner at Owner's sole option and discretion.
  - (3) At specified times required by the Owner, review the drawings and Project Manual as they are being prepared, advise Owner of any error, inconsistency or omission discovered, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules (without assuming the Design Consultants' professional responsibility).
  - (4) Prepare a constructability review report as defined by Construction Manager's proposed Preconstruction Fee.
  - (5) Coordinate with the Owner to ensure that the Construction Contract Documents comply with all applicable State of Oklahoma and the OWNER procurement requirements (without assuming any of the Owner's responsibility therefore).
  - (6) Consult with Owner and Design Consultant to determine what materials, equipment, component systems, and construction types should be included in the Contract Documents; suggest reasonable adjustments in the scope of the Project; and suggest alternate bids in the Construction Documents to adjust the Construction Cost to the Guaranteed Maximum Price (as defined herein).
- (e) Construction Planning.
- (1) Identify for and recommend to the Owner the need for purchase of items

requiring extended delivery times (“long lead items”) and expedite the procurement of such items. Participate with Design Consultant, as requested by Owner and subject to Owner’s prior approval, in the preparation of performance specifications and request for technical proposals for the procurement and installation of systems, components, and for the procurement of long lead time equipment and materials. If requested by Owner, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

- (2) Make recommendations to the other members of the Project Team regarding the division of Contract Documents and Project Manual to facilitate the bidding and awarding of construction contracts, to allow for phased or staged construction, or multiple separate contracts, and to take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, and other constraints.
- (3) Review the Drawings and the Project Manual with the other members of the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner’s separate contractors.
- (4) Schedule and conduct pre-bid conferences with interested bidders, subcontractors, material suppliers, and equipment suppliers, and record minutes of same.
- (5) Coordinate and develop with Design Consultant bid packages and work scope descriptions for each separate bid category that represent the entirety of the scope of the Work for each phase and stage of the Project.
- (6) In accordance with Oklahoma Statutes Title 61, as amended, Construction Manager shall publicly advertise and solicit either competitive sealed bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Construction Manager may seek to perform portions of the work itself if Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if Owner approves said submission of bid or proposal in advance. Owner’s determination in such matters is final. If Construction Manager intends to submit a proposal for such work, it shall notify Owner in writing prior to soliciting proposals. Criterion for determination of best value shall be provided by Owner. Construction Manager and Owner shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. If Construction Manager reviews, evaluates, and recommends to Owner a bid or proposal from a trade contractor or subcontractor, but Owner requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Contract, Owner shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk, which has been demonstrated to Owner’s satisfaction and as required by the Contract, which Construction Manager may incur because of Owner’s requirement that another trade contractor or subcontractor bid or proposal be accepted.
- (7) Assist the Owner, the appropriate separate Owner’s contractor, the

appropriate Design Consultant or other consultant, in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof including, without limitation, the fire department.

- (8) Advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.
  - (9) Construction Manager shall review the Contract Documents to ensure that they contain adequate provision for all temporary facilities necessary to enable the Subcontractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.
  - (10) In accordance with Owner's Uniform General and Supplementary Conditions, Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Construction Manager shall provide recommendations and information to Owner and Design Consultant with respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Verify that such assignments with respect to the Subcontractors are included in the Contract Documents.
  - (11) Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations for actions, which will minimize adverse effects of labor shortages.
- (f) Furniture, Fixtures and Equipment. Subject to an amendment, addendum or Change Order to this Agreement, consult with and make recommendations to the Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate the purchase and installation of such items with the Owner as may be required to meet the Schedule.
- (g) Guaranteed Maximum Price.
- (1) At the conclusion of the Bidding phase, or such other time as the Parties may agree upon when the Drawings and Specifications are sufficiently complete, Construction Manager shall submit a Guaranteed Maximum Price proposal to Owner in a form acceptable to the Owner, which shall also state a Contract Time and date of Substantial Completion upon which the proposal is based. If Owner accepts the proposal, both parties shall sign the proposal and the Guaranteed Maximum Price, Contract Time and date of Substantial Completion therein shall become part of the Contract.
  - (2) Owner, at its sole option and discretion may reject the Guaranteed Maximum Price proposal, attempt to renegotiate the proposal with Construction Manager (with the right to cease negotiations at any time and reject the proposal), or increase the Project Construction Budget. Construction Manager shall not withdraw its Guaranteed Maximum Price proposal for thirty (30) days.
  - (3) The Guaranteed Maximum Price proposal must be prepared in a format

- acceptable to the Owner which shall require a breakdown of estimated costs organized by trade, allowances, contingencies, Construction Manager's Construction Phase Fee, and other applicable items approved by the Owner.
- (4) The Guaranteed Maximum Price proposal must include a written statement describing how it was derived and prepared, which shall include, at a minimum, Drawings and Specifications, addenda, Owner's Standard Uniform General and Supplementary Conditions, allowances, all clarifications and assumptions made by the Construction Manager due to the incompleteness of the Drawings and Specifications, and assumptions as to when Contract Documents will be issued.
  - (5) In formulating the Guaranteed Maximum Price proposal, include an Owner provided Construction Contingency Allowance in an amount to be determined at the submittal of the Guaranteed Maximum Price.

**ARTICLE VI**  
**CONSTRUCTION MANAGER'S SERVICES:**  
**PART 2: CONSTRUCTION PHASE SERVICES**

601 The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed issued by Owner after approval by Owner of a Guaranteed Maximum Price for the Work or portion of the Work specified in such Notice to Proceed. In implementation of the responsibilities and duties of the Construction Manager for the Construction Phase, the Construction Manager shall provide the following services:

- (a) Project Control.
  - (1) Construction Manager shall construct the Work in strict accordance with the Contract Documents within the time required by the Schedule approved by Owner and as required by Owner's Uniform General and Supplementary General Conditions, and Division I Specifications. Construction Manager shall award and enter into, as a general contractor, all Subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project. Construction Manager shall self-perform only General Conditions Work and other Work, which has been awarded to Construction Manager in accordance with the requirements of Oklahoma Statutes Title 61, and this Contract.  
Owner reserves the right to perform Work related to the Project and to award separate contracts for Work related to the Project.
  - (2) Monitor the Work of the Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain completion of the Project at a cost not to exceed the Project Construction Budget and Guaranteed Maximum Price, and to attain Substantial Completion by the date set forth in the GMP Agreement when executed.
  - (3) Attend Owner's Project progress meetings scheduled by Owner no less often than once per month, and fully advise the Project Team at such meetings as to Project status.
  - (4) Schedule, direct and attend regular meetings with other members of the Project Team during the construction of the Project to discuss jointly such

matters as procedures, progress, problems and scheduling. Prior to each meeting, the Construction Manager shall prepare and distribute to the other Project Team members a written agenda for the meeting. Prepare and distribute at each Project Team meeting a memorandum setting forth the list of critical activities that require immediate action and the date(s) by when the activity must be completed, and record and distribute the minutes of each meeting.

- (5) As provided in Exhibit A, maintain a competent, full-time staff at the Project site to coordinate and provide general direction over the Work and progress of the Subcontractors on the Project.
- (6) As provided in Exhibit A, establish on-site organization of personnel and clearly defined lines of authority in order to effectuate the overall plans of the Project Team. At a minimum, Construction Manager's site personnel shall include qualified staff as proposed in the approved Contractor's General Conditions.
- (7) In consultation with Owner, establish procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Consultants, and other consultants with respect to all aspects of the construction of the Project, and implement such procedures.
- (8) Expedite and coordinate delivery and installation of Owner-procured material and equipment. The Construction Manager shall coordinate efforts to include the Owner's Project Architect in the preparation, development and review of the CM's GMP Proposal which will include all qualifications, clarifications, assumptions, exclusions, value engineering and all other requirements. Following Owner approval of the GMP Proposal, the CM shall monitor the development of the Construction Documents to confirm that, when complete, the documents reflect the appropriate detail describing all qualifications, assumptions, exclusions and value engineering issues contained in the GMP Proposal. The Construction Manager and the Project Architect shall jointly provide a monthly status report stating the progress of the incorporation of the GMP qualifications, clarifications, assumptions, exclusions, value engineering and all other provisions, identified in approved GMP document.
- (9) Construction Manager shall supervise and direct the Work and shall be solely responsible for construction means, methods, techniques, sequences, and procedures for the Work.
- (10) In accordance with Owner's Uniform General and Supplementary Conditions, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents.
- (11) Obtain building permits and special permits for permanent improvements as required by law or the Contract Documents. Assist Owner or Design Consultant in obtaining all approvals required from authorities having jurisdiction over the Project.
- (12) Inspect the Work of Subcontractors to ensure conformance with the Contract Documents.

(b) Scheduling.

Perform Project scheduling in compliance with Owner's Project Scheduling" if included therein, otherwise provide regular monitoring, updating, and reissuing of the all Project Schedules as construction progresses, including, without limitation, master Project schedules, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules; identify potential and actual variances between scheduled and probable completion dates, review the schedules for Work not started or incomplete and recommend to the Owner adjustments in the schedules to conform with the probable completion dates and provide summary reports to the Owner of each schedule update and document all changes in construction schedules. Incorporate activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials, processing of shop drawings, data, and samples, delivery of long lead-time items. Include Owner's occupancy requirements and occupancy priorities. Evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule. Recommend action to Owner when any Subcontract requirements are not met or appear unlikely to be met.

(c) Cost Control.

- (1) Maintain cost accounting records in good form on expenditures and materials, or for any other expenditures requiring accounting records; and afford the Owner access to these records and preserve them for a period of four (4) years after final payment is made by the Owner to the Construction Manager.
- (2) Prepare and administer, and provide to Owner, Subcontractors' schedule of values, subcontractors' sworn statements and waivers of lien as required, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as required by Owner.
- (3) Construction Manager shall promptly identify all variances between estimated costs and actual costs and shall promptly report such variances to the Project Team along with recommendations for action, but in any event, no more than five (5) business days after acquiring such information.

(d) Change Orders. Develop and implement a system acceptable to the Owner for the preparation, review and processing of Change Orders, change order requests, and requests for information, in accordance with Owner's Uniform General and Supplementary Conditions and Division I Specifications.

(e) Wage Rates. Omitted.

(f) Documents, Shop Drawings, and Submissions.

- (1) The Design Consultant shall be the interpreter of the design intent of the Construction Contract Documents, subject to the terms and conditions of the agreement between the Design Consultant and the Owner, provided, however, the Construction Manager shall request such interpretations from the Design Consultant, with Owner consent, from time to time in order to

facilitate the Construction Manager's accomplishment of its duties under this Agreement. The Owner's consent may be provided to the Construction Manager at the beginning of Part I Services and does not have to be requested on an item-to-item basis.

- (2) In collaboration with the other members of the Project Team, the Construction Manager shall establish and implement procedures for expediting the processing and Design Consultants' approval of shop drawings and other submissions, and in accordance with Division 01 Specifications, as applicable. Receive from the Subcontractors, and review, all shop drawings and other submissions for conformance with the Contract Documents. Coordinate shop drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.
- (3) The Construction Manager shall record the progress of the Project, submit written progress reports to the other members of the Project Team, including information on the Subcontractor's Work and the percentage of completion, and keep a daily log of Project construction activities available to the other members of the Project Team in accordance with Owner's Uniform General and Supplementary Conditions; whose job function involves or includes observation of Project construction, shall maintain a daily log of construction activities and observations, which daily logs shall be submitted to the Owner no less frequently than weekly for the immediately preceding week.
- (4) The Construction Manager shall maintain at Construction Manager's local office and make available to Owner, updated records of subcontracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, instructions from Owner; and shall obtain data from Subcontractors and maintain a current set of record drawings and project manual.
- (5) Coordinate and facilitate the creation of record and as-built drawings, and the procurement of warranties and guarantees in binder and CD form.
- (6) Provide Owner with complete, unaltered copies of all Subcontracts, and all amendments thereto.
- (7) The Construction Manager shall coordinate efforts to include the Owner's Project Architect in the preparation, development and review of the CM's GMP proposal which will include the qualifications, clarifications, assumptions, exclusions, value engineering and all other requirements. Following Owner approval of the GMP Proposal, the CM shall monitor the development of the Construction Documents to confirm that, when complete, the documents reflect the appropriate detail describing all qualifications, assumptions, exclusions and value engineering issues contained in the GMP Proposal. The Construction Manager and the Project Architect shall jointly provide a monthly status report stating the progress of the incorporation of the GMP qualifications, clarifications, assumptions, exclusions, value engineering and all other provisions, identified in the approved GMP document and the Construction Documents.

- (g) Safety. Construction Manager is solely responsible for all safety precautions and programs in connection with the Work. Construction Manager shall review the safety programs developed by each of the Subcontractors and prepare and submit to Owner a comprehensive safety program which complies with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable state, local, or federal laws or regulations. Construction Manager shall ensure compliance by the Subcontractors with their contractual safety requirements.
  
- (h) Bonds. Statutory Payment Bond, Performance Bond and Maintenance Bond on a form prescribed by Owner in the total amount of the GMP acceptance in the forms attached hereto as Exhibit D, shall be supplied within ten (10) days of contract execution in accordance with Owner's Uniform and Supplementary General Conditions. The surety for any security bond shall meet the same requirements as set forth for payment and performance bonds. If the construction price is not known, then the payment and performance bonds shall be based on Owner's Construction Cost Limitation and revised when the construction price is established. When the Guaranteed Maximum Price is established, the payment and performance bonds shall be revised to reflect any changes from estimated costs or shall be issued concurrently with the execution of the Guaranteed Maximum Price proposal if a security bond was previously issued. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, then the penal sum of the bonds shall be increased based on the cumulative total value of all Guaranteed Maximum Prices in effect. The Construction Manager shall deliver to the Owner a fully executed

**ARTICLE VII**  
**PAYMENTS TO THE CONSTRUCTION MANAGER**

7.01 For Pre-construction Phase Services:

- (a) In full consideration of Construction Manager's Services during the Pre-construction Phase of this Agreement, Owner will pay to Construction Manager the Pre-construction Phase Fee Lump Sum amount of **\$ 39,495.00** payable proportionately on a monthly basis based on the amount of effort expended by Construction Manager based on hourly rates as stated in Exhibit A.
  
- (b) To receive payment, Construction Manager shall send monthly invoices to Owner. If Construction Manager is being paid a fee based on hourly rates, then Construction Manager's invoices shall specify the days, hours and natures of the tasks covered by the invoices, such invoices not to exceed in the aggregate the maximum stated above.
  
- (c) Additional Services:
  - (l) From time to time Owner may request that Construction Manager perform services in addition to those Services required or reasonably inferable herein (such services in addition are hereinafter called "Additional Services").

Each time that Construction Manager is requested to perform services which Construction Manager deems to be Additional Services, and prior to performing such Additional Services, Construction Manager shall complete and forward to Owner for acceptance by Owner an Additional Services Requisition in the form of Exhibit B attached hereto, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Construction Manager has determined that the requested services are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which Construction Manager is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Services. Construction Manager shall proceed only after written acceptance by Owner of the Additional Services Requisition and written approval from Owner to proceed.

- (2) If Owner concludes that all or part of the services described in the Additional Services Requisition are Services already required to be performed by Construction Manager pursuant to this Agreement or are reasonably inferable there from, then Owner shall notify Construction Manager of Owner's determination and Owner and Construction Manager shall attempt, in good faith, to resolve by negotiation their differences. If within seven (7) business days Owner and Construction Manager are unable to resolve their differences, then Construction Manager shall nevertheless perform the services requested by Owner as if the services were Services required to be performed pursuant to this Agreement, without prejudice, however, to Construction Manager's right to pursue a claim for compensation for such disputed services.
  - (3) Upon acceptance by Owner, each Additional Services Requisition and the services performed by Construction Manager pursuant to such Additional Services Requisition shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a required Service at the original execution of this Agreement.
- (d) If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.
  - (e) Owner shall compensate Construction Manager for Construction Phase services on the basis of the sum of the Cost of the Work as defined herein plus the Construction Manager's Construction Phase Fee (such sum is referred to as the "Contract Sum") as set forth below. The Contract Sum shall not exceed the Guaranteed Maximum Price, subject to changes authorized by the terms and conditions of the Contract Documents. Any cost which is not authorized by the terms and conditions of the Contract Documents, but which would cause the Guaranteed Maximum Price to be exceeded shall be paid by Construction Manager without reimbursement by Owner. In the event that the Contractor is required to pay or bear the burden of any new federal, state, or local tax, or of any rate increase of an existing tax (except a tax on income) with respect to its forces and/or its performance of the Work (not including the forces and Work performed by Subcontractors) as a result of any statute, court decision, written ruling, or regulation taking effect after the effective date of this

Agreement, the Guaranteed Maximum Price shall be increased by the amount of the new tax or tax increase.

- (f) The Owner has afforded the Construction Manager with unrestricted access to the existing improvements and conditions on the site and has given the Construction Manager the opportunity to thoroughly investigate the existing conditions, which the Construction Manager represents it has done. The results of Construction Manager's investigation have been taken into account in establishing the Guaranteed Maximum Price of the Work. Construction Manager shall not be entitled to a claim for an adjustment in time or price under Owner's Uniform General and Supplementary Conditions for conditions which Construction Manager discovered or ought to have discovered in Construction Manager's investigation. Before proceeding with the Work, the Construction Manager shall review the Drawings and Specifications and notify the Design Consultant and Owner of any errors, omissions or discrepancies in the Drawings and Specifications it discovers with respect to the existing conditions. The Construction Manager shall not proceed with the Work, if any defect, defined as any error, omission, conflict, inconsistency or lack of clarity, is known or should be known by Construction Manager to exist in the Drawings or Specifications or other Contract Documents, and if Construction Manager nevertheless proceeds to perform the work then Construction Manager shall be responsible for all foreseeable resulting cost, including the cost of redoing or remedying the Work and time delays resulting there from unless and to the extent such costs result from design or concealed conditions. Upon discovering a defect in the Drawings or Specifications, the Construction Manager shall immediately submit a written request for an explanation or decision to the Design Consultant and the Owner.
- (g) If the actual Cost of the Work plus Construction Manager's Construction Phase Fee is less than the Guaranteed Maximum Price, then the entire savings shall be returned to the Owner and a final adjustment made to the contract amount. If at any point during the construction of the project the Construction Manager and Owner agree the cost of the work will be less than the Guaranteed Maximum Price, then the Guaranteed Maximum Price will be reduced to the agreed upon amount. For items in the Contract Documents which are noted as "Allowances", 100% of any savings shall be the Owner's. The Cost of the Work included in the Allowances shall be determined in accordance with Owner's Uniform General and Supplementary Conditions except that any claim by the Contractor for an adjustment to the Guaranteed Maximum Price based on the cost for Allowance work shall be made within a reasonable time after the issuance of the Drawings and Specifications for the Allowance items. Any increase to Allowance amounts based upon estimates by the Contractor, which increases exceed such Allowance amounts, shall not result in any increase to the Contractor's Fee.
- (h) The Construction Manager's General Conditions cost shall be considered a Cost of the Work with respect to the Construction Manager's Guaranteed Maximum Price. The General Conditions shall be a reimbursable budget item which is paid as costs are incurred. Any overages on General Condition items shall be funded by the CM contingency. Any savings of General Conditions at the end of the project shall be 100% returned to the Owner. Project Management/Supervision costs shall be a separate line item from General Conditions and shall be a fixed sum and not billed

as a reimbursable. Project Management/supervision shall be billed on equal monthly intervals for the duration of the project. CM assumes risk for overages on project management/supervision costs.

- (i) If the Guaranteed Maximum Price increases from the amount originally set forth in the approved GMP document, then Construction Manager shall be entitled to an equitable increase in the Construction Manager's Construction Phase Fee which shall be limited to a 6% Fee.
- (j) In Owner's Uniform General and Supplementary Conditions, references to adjustments in "cost" or "costs" refer to Costs of the Work as defined herein below, and references to Construction Manager's "overhead" and "profit" refer to Construction Manager's Construction Phase Fee.
- (k) The Construction Manager's Fee shall cover the Construction Manager's profit, general overhead and the following costs and expenses:

All expenses in connection with maintaining and operating Construction Manager's main office and any branch or field offices, including (except as otherwise provided hereinafter):

- (1) Salaries of Construction Manager's officers, project manager(s), estimators, and schedulers not directly assigned to the project.
  - (2) Salaries of persons employed in the main or branch offices of the Construction Manager whose time is devoted to the general conduct of the Construction Manager's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.
  - (3) Overhead or general expenses of any kind except those specifically included herein.
  - (4) Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than pre-construction services) relating to accounting in Construction Manager's office and even if at the site, except as specifically identified herein.
  - (5) Interest on the Construction Manager's capital or on money borrowed by the Construction Manager, including the capital employed by the Construction Manager in the performance of the Work.
  - (6) Amounts required to be paid by Construction Manager for Federal and/or State income and franchise taxes.
  - (7) Legal, accounting, or other similar professional services provided by or to Construction Manager, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with the Owner, the Design Consultants or any other person or entity relating to the Project or otherwise.
- (i) In addition to the payment procedures described in Owner's Uniform General and Supplementary Conditions, Division I Specifications, Contractor shall submit with each application for payment any and all evidence which Owner or Design Consultant shall deem necessary to support the amount requested. In addition, Construction Manager will provide to Owner a copy of the partial lien release obtained from each Subcontractor for all monies funded by OWNER in the

previous application for payment. The Construction Manager's Construction Phase Fee shall be shown as a separate line item on the schedule of values. In determining the percentage of completion, Construction Manager shall use the lesser of the percentage of the Work actually completed for each classification on the schedule of values, or the percentage of the Guaranteed Maximum Price allocable to that item which has been actually incurred and demonstrated as an expense by the Construction Manager. If the Construction Manager's Construction Phase Fee is a fixed fee, then the amount requested for such fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the then current Guaranteed Maximum Price. Retainage as specified in Owner's Uniform General and Supplementary Conditions will be applied to the entire amount requested including the Cost of the Work and the Construction Manager's Construction Phase Fee. Each schedule of values submitted shall maintain the originally established value for each work classification line item or subcontractor and shall contain any revisions to costs or cost estimates for each such classification or subcontractor. The format and tracking method of the original schedule of values and of all updates thereto shall be subject to the approval of Owner and Design Consultant. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that classification or subcontractor, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Construction Manager's overhead and profit) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed). Payments to Subcontractors included in an application for payment shall not exceed the percentage of Work allocable to that Subcontractor for each respective schedule of values classification which has been actually completed.

7.02 Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Agreement.

7.03 The final request for payment shall not be made until Construction Manager delivers to Owner a complete release of all liens arising out of this Agreement and an affidavit that so far as Construction Manager has knowledge or information, the release includes and covers all materials and services over which Construction Manager has control for which a lien could be filed, but Construction Manager may, if any agent or consultant refuses to furnish a release in full, furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Construction Manager shall refund to Owner all moneys Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

7.04 In addition to the procedures contained in Owner's Uniform General and Supplementary General Conditions, Owner shall have no obligation to make final payment until a final accounting of the Cost of the Work has been submitted by Construction Manager and has been verified by Owner or Owner's representatives, including receipt of as constructed documents, operating manuals and warranties. The aggregate total of payments to Construction Manager shall not exceed the total of the actual Cost of the Work as verified by Owner or Owner's representative from Construction Manager's final accounting plus the applicable Construction Manager's Construction Phase Fee, as certified for payment in accordance with the Contract, but in no event more than the

Guaranteed Maximum Price. If payments made to Construction Manager exceed that which is due and owing pursuant to this Article VII, then Construction Manager shall promptly refund such excess to Owner.

7.05 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a progress payment or final payment) to Construction Manager hereunder if any one or more of the following conditions precedent exist:

- (a) Construction Manager is in breach or default under this Agreement;
- (b) Any part of such payment is attributable to services that are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement;
- (c) Construction Manager has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to Construction Manager; or
- (d) If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement, no additional payments will be due Construction Manager hereunder unless and until Construction Manager, at Construction Manager's sole cost, performs a sufficient portion of the remaining services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the then remaining services.
- (e) Nothing contained herein shall require the Owner to pay the Construction Manager an aggregate amount exceeding the Guaranteed Maximum Price or to make payment if in the Owner's belief the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Construction Manager.

7.06 No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the services to which such partial payment relates, or a release of Construction Manager of any of Construction Manager's obligations hereunder or liabilities with respect to such services.

7.07 Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance of the Pre-construction Phase Services and the construction of the Work.

7.08 Owner shall have the right to verify and audit the details set forth in Construction Manager's billings, certificates, accountings, cost data, and statements, either before or after payment therefore, by (1) inspecting the books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager's business employees; (4) visiting the Project site; and (5) other reasonable action.

7.10 The acceptance by Construction Manager or Construction Manager's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which Construction Manager or Construction

Manager's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by Construction Manager as unsettled at the time of the final request for payment.

## **ARTICLE VIII** **COST OF THE WORK**

8.01 The term Cost of the Work means costs which the Construction Manager must necessarily incur to properly perform the Work in strict compliance with the Contract Documents. Cost of the Work includes only the items set forth in this Article VIII.

(a) Labor and Administrative:

- (1) Reasonable and customary wages paid to construction workers directly employed by Construction Manager who perform the construction of the Work.
- (2) Reasonable and customary wages or salaries of Construction Manager's supervisory and administrative personnel who are identified on Exhibit A but only when stationed full-time at the site with the Owner's prior consent.
- (3) Costs paid or incurred by Construction Manager for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii), or otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined herein.
- (4) Reasonable and customary travel expenses of Construction Manager's personnel incurred directly and solely in support of the Project and approved in advance in writing by Owner.
- (5) Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, telephone service, and reasonable and customary petty cash expenses of Construction Manager's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.

(b) Materials, Equipment, Tools, Rentals:

- (1) Costs of materials and equipment to be incorporated (or incorporated) into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the Work, or at Owner's option, Construction Manager shall sell such materials and deduct the gross proceeds from the Cost of the Work. Payment for stored materials is subject to Owner's Uniform General and Supplementary General Conditions.
- (2) Costs of materials, supplies, temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, if such items are fully consumed in the construction of the Work, and Owner approves such purchase in advance in writing. Cost for used items shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on

- cost of the item minus its fair market salvage value.
- (3) Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, and may include transportation, installation, and minor maintenance costs, and removal, all so long as Owner has approved such items and the rental rates in advance in writing. If tools, machinery or construction equipment are rented from the Construction Manager, the amount of such rental, the rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be determined by application of "Contractor's Equipment Cost Guide," latest edition published by the AGC, approved by the Owner before commitments are made and shall in no event be higher than the prevailing competitive rates paid in the locality for similar equipment. In no event shall the aggregate rental cost to Owner exceed the purchase price and maintenance cost of the item. In the event equipment can be purchased for an amount comparable to the aggregate rental cost of said equipment, Construction Manager shall purchase such equipment and turn it over to Owner upon final completion of the Work, or, at Owner's option, credit to the Owner with the amount of the fair market resale value.
  - (4) Site debris removal and disposal costs in accordance with all applicable laws and regulations.
- (c) Subcontracts: Payments made to Subcontractors by Construction Manager for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such Subcontractors.
- (d) Other costs:
- (1) Governmental sales and use taxes directly attributable to the Work. Owner is a state agency and Construction Manager shall avail itself of all exemptions which may exist for such taxes based on Owner's status.
  - (2) Permit and inspection fees, except that as a state agency, Owner is typically exempt from such fees.
  - (3) Premiums for insurance and bonds to the extent directly attributable to this Contract.
  - (4) Testing fees pursuant to the terms and conditions of Owner's Uniform General and Supplementary Conditions.
  - (5) Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work.
  - (6) Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of Construction Manager.
  - (7) Other costs approved in advance in writing by Owner at Owner's sole option and discretion.

## 8.02 Costs Not Included in the Cost of the Work

The following shall not be included in the Cost of Work to be paid by Owner:

- (a) Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.

- (b) Legal and administrative costs to review and negotiate these Contract Documents.
- (c) Travel and subsistence expense of Construction Manager, its officers or employees incurred while traveling between the Project and Construction Manager's principal or branch offices, and travel in the metropolitan area of the Project.
- (d) Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Construction Manager.
- (e) Costs incurred by Construction Manager resulting from the failure of Construction Manager or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules therefore, or failure of Construction Manager to comply with directives of Owner not in conflict with said schedules.
- (f) Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- (g) Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the site office and only as specifically provided herein.
- (h) Any and all overhead expense, or office expense at any location, except site office expense to the extent specifically included herein.
- (i) Costs related to Construction Manager's indemnification obligations pursuant to Article X hereof.
- (j) The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- (k) Any cost arising out of the fault or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or equipment, and damage to persons or property.
- (l) Liquidated or actual damages imposed by Owner for failure of Construction Manager to complete the Work within the Contract Time.
- (m) Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the Guaranteed Maximum Price to be exceeded.

### 8.03 Discounts, Rebates and Refunds

The Cost of the Work to be paid by Owner shall be credited with the following items:

- (a) Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of

rental, and remaining after completion, whether such sale is made to the Owner, the Construction Manager, or to some other party; and any such sale, if made to others than the Owner, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and the Construction Manager shall use its best efforts to obtain the highest price in respect of such sales.

- (b) If Owner makes funds available to Construction Manager, discounts earned by the Construction Manager through advance or prompt payments. The Construction Manager shall obtain all possible trade and time discounts on bills for material furnished and shall pay said bills within the highest discount periods. The Construction Manager shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the Owner.
- (c) Reasonable market value as approved by the Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by the Construction Manager.
- (d) Rebates, discounts, or commissions allowed to and collected by the Construction Manager from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.
- (e) Construction Manager shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of the Construction Manager. Should Construction Manager not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Construction Manager, including, but not limited to, by deducting the amount from payments due the Construction Manager.

## **ARTICLE IX**

### **OWNER'S RESPONSIBILITIES**

9.01 The Owner shall be fully acquainted with the Project and shall facilitate and coordinate the Owner's Project issues with the Construction Manager. Upon request, the Owner will furnish in writing the authorization of each representative of the Owner to represent it in connection with the Project.

9.02 The Owner shall cooperate in providing information to the other members of the Project Team regarding its requirements for the Project.

9.03 Owner shall furnish for the site of the Project any necessary surveys describing the physical characteristics, known legal limitations, utility locations, and the legal description, to the extent such items may be required by agreements between Owner and Design Consultant or other consultants. Owner shall inform all special consultants retained by the Owner that they shall coordinate their services through the Construction Manager. Owner shall provide special testing and inspection services for Quality Assurance only.

9.04 If the Owner has actual knowledge of any fault or defect in the Project or non-conformance

with the Drawings and Project Manual, Owner shall give prompt written notice thereof to the Construction Manager.

**ARTICLE X**  
**INDEMNITY**

10.01 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONSTRUCTION MANAGER AND ITS AGENTS, PARTNERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE OWNER AND THE CITY OF LAWTON, OKLAHOMA, ITS AFFILIATED ENTITIES, REPRESENTATIVES OF THE OWNER, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, TRUSTEES, PARTNERS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, (COLLECTIVELY "LIABILITIES") ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR ANY PART THEREOF WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF THE CONSTRUCTION MANAGER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW. Indemnitors indemnification obligations, if any, shall not exceed any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitor, its agents, representatives, subcontractors, or suppliers.

10.02 CONSTRUCTION MANAGER SHALL PROTECT AND INDEMNIFY THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY CONSTRUCTION MANAGER, OR BY OWNER AT THE DIRECTION OF CONSTRUCTION MANAGER, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CONSTRUCTION MANAGER AND CONSTRUCTION MANAGER SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONSTRUCTION MANAGER DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR DESIGN CONSULTANT'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CONSTRUCTION MANAGER

AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

10.03 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

## **ARTICLE XI**

### **CONSTRUCTION MANAGER'S INSURANCE**

11.01 The Construction Manager shall not commence work under the Agreement until it has obtained required insurance as set forth in the Uniform General and Supplementary General Conditions and such insurance has been reviewed and approved in writing by the Owner. Approval of the insurance by the Owner shall not relieve nor decrease the liability of the Construction Manager hereunder. Prior to commencing any of the Pre- construction Services, Construction Manager shall provide evidence as required by this Article that coverage for Comprehensive Automobile Liability are in full force and effect. Prior to commencing any construction work, Builder's Risk as set forth in Owner's Uniform General and Supplementary Conditions shall be in full force and effect and shall be increased as necessary for each separate bid package, phase, or Stage of construction prior to the commencement of construction for that package, phase, or Stage.

11.02 The Construction Manager shall not cause or allow any of its insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

11.03 The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Construction Manager.

11.04 The Owner shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies. Actual losses not covered by insurance as required by this Article shall be paid by the Construction Manager.

11.05 The Owner will not reimburse Construction Manager for the universal or total project funding of subcontractor bonding, subcontractor default or other forms of insurance or payments to protect against subcontractor non-performance, failure or default. In the event of a subcontractor default, the contractor may submit the default particulars and resolution cost to the Owner for review and approval to expend out of Contractor's Contingency.

## **ARTICLE XII**

### **TERMINATION**

12.01 In addition to the termination procedures set forth in Owner's Uniform Standard General and Supplementary Conditions, Owner may terminate the Contract at the following times:

- (a) At any time for convenience upon thirty (30) days' written notice to Construction Manager.

- (b) At the conclusion of the Schematic Design Phase.
- (c) At the conclusion of the Design Development Phase.
- (d) At the conclusion of the Construction Documents Phase.
- (e) If any Guaranteed Maximum Price proposal from Construction Manager is not accepted by Owner.
- (f) During the Pre-construction Services phase, if Construction Manager is in default or breach under this Agreement and does not cure such default or breach within fourteen (14) days after written notice from Owner specifying the nature of the default.
- (g) Prior to the commencement of construction, Owner may terminate for convenience upon thirty (30) days' written notice to Construction Manager.

If the Contract is terminated under subparagraphs 12.01(a), (b), (c), (d) or (f), then Construction Manager shall be compensated for the Pre-construction Phase Services which it has completed in accordance with this Agreement prior to the date of termination as provided hereunder. No termination expenses will be paid to Construction Manager. The date of the conclusion of the Schematic Design Phase, Design Development Phase, and Construction Documents Phase is determined by the date of Owner's acceptance of the respective submittals from the Design Consultant.

12.02 A termination under this Contract above shall not relieve Construction Manager or any of its employees of liability for violations of this Agreement, any act or omission, or negligence or willful act of Construction Manager.

12.03 As of the date of termination of this Contract, Construction Manager shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Construction Manager in connection with Construction Manager's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise. All drawings, plans, specifications, renderings and models, etc., prepared by the Design Consultant are the property of Owner or Design Consultant, as set forth in the terms and conditions of the agreement between Owner and the Design Consultant. They are not to be used by any person or entity other than Owner on other projects unless expressly authorized by Owner.

**ARTICLE XIII**  
**MISCELLANEOUS PROVISIONS**

13.01 Exhibits. All exhibits hereto are hereby incorporated herein by reference for all purposes.

13.02 Assignment. This Agreement is a personal service contract for the services of Construction Manager, and Construction Manager's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner to a component or affiliate of OWNER.

13.03 Entire Agreement; Modifications; Conflicts. This Agreement supersedes all prior agreements, written or oral, between Construction Manager and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Owner and Construction Manager. If there is a conflict between this Agreement and Owner's Uniform General and Supplementary General Conditions, then the provision that provides the greatest benefit to Owner shall govern.

13.04 Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

13.05 Governing Law, Jurisdiction, and Venue. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Oklahoma. Jurisdiction and Venue for any legal action shall be in the District Court of Comanche County, Oklahoma, or the federal Western District of Oklahoma.

13.06 Waivers. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

13.07 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

13.08 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Construction Manager one or more representatives to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Construction Manager shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.

13.10 Records. Records of Construction Manager's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for 4 (four) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Construction Manager in writing.

13.11 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when

deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:                   **City Clerk  
City of Lawton  
212 SW 9<sup>th</sup> Street  
Lawton, OK 73501**

Copy to:                       **City Attorney  
212 SW 9<sup>th</sup> Street  
Lawton, OK 73501**

Copy to:                       **City Engineer  
212 SW 9<sup>th</sup> Street  
Lawton, OK 73501**

If to Construction Manager:

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

or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

13.12 Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

13.13 Independent Contractor. Construction Manager recognizes that it is engaged as an independent contractor and acknowledges that Owner will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Construction Manager, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Construction Manager hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.

**ARTICLE XIV**  
**OTHER CONDITIONS OR SERVICES**

14.1 Certification of No Asbestos Containing Materials or Work

- (a) The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the

scope of the proposed submittal.

- (b) The Contractor shall provide at Substantial Completion, a notarized certification to the Owner and the Architect that no asbestos containing materials or work was provided, installed, furnished or added to the project.
- (c) The Contractor shall take whatever measures he deems necessary to ensure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.
- (d) The Contractor shall insure compliance with the following act – Asbestos Hazard Emergency Response Act (AHERA – 40 CFR 763-99 (7)) from all of his subcontractors and assigns as listed in item C above. All materials used on this project shall be certified as non-Asbestos Containing Building Materials (ACBM).
  - 1. Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this project.
  - 2. The Contractor shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.
  - 3. The Contractor shall provide a notarized certification that no ACBM's were used.

14.2 The Construction Cost Limitation (CCL) for the Project shall be \$5,755,630.00 and may be adjusted by the Owner at the time of setting the GMP. The CCL shall include the Construction Manager Construction Contingency Allowance and the Owner's Construction Contingency.

14.3 Refer to Exhibit F for a complete list of approved general condition items. These approved items shall be reflected in the General Conditions lump sum cost shown as a line item in the Guaranteed Maximum Price Proposal and the schedule of values/cost breakdown. Items not shown on Exhibit F will not be accepted as a general condition cost and will be part of the Pre-construction Phase Fee, Construction Phase Fee or Cost of Work.

14.4 This Agreement is subject to the provisions of City of Lawton Charter and City Code and the laws of the State of Oklahoma. Construction Manager must disclose the name of any Officer, Director or Agent who is also an employee of the City of Lawton or any of its Agencies or Subdivisions. Further, Construction Manager must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the vendor's firm or any of its branches.

Construction Manager agrees, in connection with the performance of work under this agreement:

14.5 Non-Discrimination. Construction Manager agrees, in connection with the performance of work under this Agreement:

Construction Manager will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, ancestry, or physical or mental Impairment. The Construction Manager shall take affirmative action to ensure that employees are treated without regard to their race, creed, color, sex, national origin, ancestry, or physical or mental impairment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, termination, rates of pay or other forms of

compensation and selection for training, including apprenticeship. The Construction Manager agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth provisions of this section.

The Construction Manager agrees to include this non-discrimination clause in any subcontract connected with the performance of this agreement.

In the event of the Construction Manager's non-compliance with the above non-discrimination clause, this agreement may be terminated by the City. The Construction Manager may be declared terminated by the City until satisfactory proof of intent to comply is made by the Construction Manager.

14.6 The following exhibits or other documents are hereby incorporated by reference for all purposes as if fully set forth herein:

- Exhibit A Personnel, Staff, Subcontractors and Duties
- Exhibit B Additional Services Requisition
- Exhibit C Constructability Implementation Program
- Exhibit D Performance Bond, Statutory Payment Bond and Maintenance Bond forms
- Exhibit E Additional Contract Documents/Specification Sections
  - 1. Uniform General Conditions and Supplementary General Conditions
  - 2. Project Schedule
- Exhibit F Approved General Conditions Line Items
- Separate CMAR Response to City of Lawton RFQ dated

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

(FOR CORPORATIONS ONLY)

CMSWillowbrook, Inc.  
Name of Corporation

By Weston Dett

Title President

ATTEST: [Signature]

Title CFO

(AFFIX SEAL)



(FOR PARTNERSHIPS AND PROPRIETORSHIPS)

Name of Partnership or Proprietorship

By

Title

COUNTY OF COMANCHE }  
STATE OF OKLAHOMA }

Before me the undersigned, a Notary Public in and for said state, on this 26 day of April, 2022, personally appeared Weston Dett, a member of the partnership/proprietorship CMSWillowbrook, Inc to me known to be the identical person who executed the within and foregoing instrument on behalf of said partnership/proprietorship and acknowledged to me that he (he/she) executed the same as his/her free and voluntary act and deed, and for the free and voluntary act and deed of said partnership/proprietorship, for the uses and purposes therein set forth.



My Commission Expires 5/3/25

Brandi Winters  
Notary Public

CITY OF LAWTON, OKLAHOMA  
A Municipal Corporation

  
Stan Booker, MAYOR

ATTEST:

  
Traci Hushbeck, CITY CLERK

APPROVED as to form and legality this 24 day of May, 2022.

  
John Ratliff, CITY ATTORNEY

I, Joe Don Dunham, Finance Director, of the City of Lawton, Oklahoma, do hereby certify that I have entered the amount of this encumbrance (\$ \_\_\_\_\_) against the appropriated Account \_\_\_\_\_,

and after charging this encumbrance in the amount of \$ \_\_\_\_\_, there is an unencumbered balance in said appropriated account of \$ \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022

  
Joe Don Dunham, Finance Director

**EXHIBIT A**

**PERSONNEL, STAFF, SUBCONTRACTORS AND DUTIES**  
**HOURLY RATES**

**(if applicable under 7.01(a))**

(To be completed by Construction Manager and returned with executed Agreement)

## EXHIBIT A

**Project Name:** EN2004A City Hall Renovation  
**Project Location:** Lawton, Oklahoma  
**Date:** January 11, 2022  
**Prelim Budget:** \$ 5,755,630.00 Construction Budget



www.cmswillowbrook.com

### Pre Construction Fee Calculation Detail

Phase & Task Description	Manhours				
	<u>Cary</u>	<u>Rick</u>	<u>Erik</u>	<u>Cristy</u>	
	CM \$225/hr	Project Manager \$160/hr	Estimator \$160/hr	PreCon Manager \$160/hr	
<b>Design Development Phase</b> <span style="float: right;"><b>1 Months</b></span>					
(1) Cost Estimate Deliverable	2	0	16	0	
DD Technical Review	2	0	2	0	
Project Master Scheduling	2	0	0	0	
Trend Log / Value Planning	2	0	2	0	
Team Meetings	2	0	2	2	
Reports	0	0	2	0	
<b>Phase Manhour Subtotal</b>	<b>10</b>	<b>0</b>	<b>24</b>	<b>2</b>	
	\$ 2,250.00	\$ -	\$ 3,840.00	\$ 320.00	\$ 6,410.00
<b>Construction Document Phase</b> <span style="float: right;"><b>3 Months</b></span>					
(3) Bid Package   bid form draft (35%, 50%, 95%)	3	12	12	0	
(3) Cost Estimate deliverables (35%, 50%, 95%)	6	0	24	0	
Construction Feasibility	2	4	4	0	
Schedule Update	2	2	0	0	
Cash Flow Projections	2	0	0	0	
Phase Funding Modeling	2	0	0	0	
Material Survey	0	4	4	0	
Value Analysis	2	4	4	0	
Team Meetings	8	8	8	8	
<b>Phase Manhour Subtotal</b>	<b>27</b>	<b>34</b>	<b>56</b>	<b>8</b>	
	\$ 6,075.00	\$ 5,440.00	\$ 8,960.00	\$ 1,280.00	\$ 21,755.00
<b>Bid Phase</b> <span style="float: right;"><b>1 Month</b></span>					
Prepare Division 00 Front Ends	0	0	0	8	
Bidder Management + Interest Generation	0	8	0	8	
RFI Coordination	0	4	4	4	
PreBid Conference + Bid Opening	1	2	2	2	
Bid Analysis and Review	1	8	8	0	
GMP Preparation, Bid Recommendations, Contracts	0	0	0	8	
Identify AHJ   Permits	0	2	0	0	
<b>Phase Manhour Subtotal</b>	<b>2</b>	<b>24</b>	<b>14</b>	<b>30</b>	
	\$ 450.00	\$ 3,840.00	\$ 2,240.00	\$ 4,800.00	\$ 11,330.00
<b>Total Preconstruction Fee</b>					<b>\$ 39,495.00</b>

**Owner**

BY: \_\_\_\_\_

PRINTED: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT B**  
**ADDITIONAL SERVICES REQUISITION**

Requisition Number:  
Project Number:  
Project Name:

Date: \_\_\_\_\_

To: (Contractor)

Gentlemen:

Please refer to the Agreement dated \_\_\_\_\_, between the City of Lawton ("Owner") and the undersigned ("Construction Manager") as amended to the date hereof (such agreement as so modified and amended being hereafter called the "Agreement") pursuant to which Construction Manager is to perform certain services. The terms that are defined in the Agreement shall have the same meanings when used in this letter.

1. Owner has requested the performance of the services described below which Construction Manager deems to be Additional Services.

(Description of Services.)

2. Construction Manager agrees to perform the Additional Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and for reimbursement of expenses in accordance with the Agreement incurred solely in connection with the performance of such Additional Services, but which reimbursement for expenses will not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

3. Construction Manager will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than \_\_\_\_\_ (\_\_\_\_\_) days after Construction Manager is authorized to proceed.

If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter at the space provided for this purpose and by inserting the date upon which Construction Manager is authorized to commence performance of the Additional Services described in Paragraph 1 above.

Sincerely yours,

CONSTRUCTION MANAGER

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.  
Construction Manager is authorized to commence performance of the Additional Services on \_\_\_\_\_, 20 \_\_\_\_.

If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter at the space provided for this purpose and by inserting the date upon which Construction Manager is authorized to commence performance of the Additional Services described in Paragraph 1 above.

OWNER

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ORIGINAL CONTRACT AMOUNT (\$ \_\_\_\_\_)

PREVIOUS ADDITIONS (\$ \_\_\_\_\_)

PREVIOUS DEDUCTIONS (\$ \_\_\_\_\_)

NET BALANCE CONTRACT AMOUNT (\$ \_\_\_\_\_)

THIS (Addition) (Deduction): (\$ \_\_\_\_\_)

ADJUSTED CONTRACT AMOUNT (\$ \_\_\_\_\_)

Xc: Contractor  
Director  
Project Manager  
File

**EXHIBIT C**  
**CONSTRUCTABILITY IMPLEMENTATION PROGRAM**

**Program Objectives:**

- Identify and document project cost and schedule savings

**Proposed Steps:**

- **Constructability Implementation Meeting**
  - identification of all project team personnel and all project stakeholders
  - clarification of project goals, objectives, and progress to date
  - team briefing on objectives, methods, and concepts of constructability
  - familiarization with implementation program
  - preliminary identification of constructability priorities and special challenges or concerns
- **Constructability Review of Schematic Design (SD) Documents; Comments Submitted to CM Team**
  - establishment of project constructability procedures, including procedures for documenting savings
- **Meeting to Review Schematic Design Constructability Comments**
  - prioritization and time-phasing of constructability concepts
  - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)
- **Design Development Constructability Review Comments to CM Team**
  - follow-up discussions on front-end, high-priority concepts
  - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)
- **Constructability Review Meeting**
  - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
  - recommend alternative design suggestions for consideration and document potential savings
- **30% CD Constructability Review Comments to CM Team**
  - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
  - recommend alternative design suggestions for consideration and document

potential savings

- **50% CD Constructability Review Comments to CM Team**
  - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
  - recommend alternative design suggestions for consideration and document potential savings
- **95% CD Constructability Review Comments to CM Team**
- **Constructability Discussions with CM Team**
- **Document On-site Constructability Lessons Learned**
- **Close-out Project Constructability Documentation**

**EXHIBIT D**

PERFORMANCE BOND, STATUTORY PAYMENT BOND  
AND MAINTENANCE BOND

Exhibit D

Bond No. \_\_\_\_\_

# Performance Bond

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

**CONTRACTOR (Name and Address):**

**SURETY:**

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

**OWNER/OBLIGEE (Name and Address):**

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

**CONSTRUCTION CONTRACT**

Date: \_\_\_\_\_

Amount: \$ \_\_\_\_\_ Dollars

Description (Name and Location):

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

**BOND:**

Date: \_\_\_\_\_ (Not earlier than Construction Contract Date)

Amount: \_\_\_\_\_ Dollars

Modifications to this Bond:  None  See Section 16

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company

Company

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

(Any additional signatures appear on the last page of this Performance Bond)

FOR INFORMATION ONLY – Name, address and telephone

AGENT OR BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party)

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

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 Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:
  - .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 Section 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 Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Section 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 Section 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 Construction Contract;
  - 5.2 Undertake to perform and complete the Construction 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 Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 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:
    - .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
    - .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 Section 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 Section 5.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
7. If the Surety elects to act under Section 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 Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the

commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - .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 Section 5; and
  - .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Section 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 Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.
  10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
  11. 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 period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
  12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the 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 construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. 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 Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - 14.2 **Construction 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 Construction Contract.
  - 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction 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:

---

---

---

---

---

---

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

CONTRACTOR AS PRINCIPAL

SURETY

Company

Company

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Bond No. \_\_\_\_\_

## Payment Bond

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

CONTRACTOR (Name and Address):

SURETY:

OWNER/OBLIGEE (Name and Address):

### CONSTRUCTION CONTRACT

Date:

Amount:

DOLLARS

Description (Name and Location):

### BOND

Date (Not earlier than Construction Contract Date):

Amount: \$

DOLLARS

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL

SURETY

Company:

Company:

Corporate Seal

Corporate Seal

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title:

Name and Title:

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

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

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services

required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

Paragraph 4 is amended to insert sub-paragraph 4.3, which states:

4.3 Claimants have furnished to Surety proof of claim duly sworn to by Claimants with adequate supporting documentation proving the amount claimed is due and payable.

Paragraph 5 shall be amended to delete the word "or" and insert the word "and" in its place.

Paragraph 6 and its sub-paragraphs 6.1 and 6.2 shall be deleted in their entirety and replaced with the following:

When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall, within 90 days of the date when claimant finally completed its satisfactions of the conditions of Paragraph 4 notify the Claimant of the amounts that are undisputed and the basis for challenging any amounts that are disputed, including, but not limited to, the lack of substantiating documentation to support the claim as to entitlement or amount, and the Surety shall pay or make arrangements for payment of any undisputed amount; provided, however, that the failure of the Surety to timely discharge its obligations under this paragraph or to dispute or identify any specific defense to all or any part of a claim shall not be deemed to be an admission of liability by the Surety as to such claim or otherwise constitute a waiver of the Contractor's or Surety's defenses to, or right to dispute, such claim. Rather, the Claimant's sole remedy shall be the immediate right, without further notice, to bring suit against the Surety to enforce any remedy available to it under this Bond.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL (Corporate Seal)  
Company:

Signature: \_\_\_\_\_

Name and Title:

Address:

SURETY: (Corporate Seal)  
Company:

Signature: \_\_\_\_\_

Name and Title:

Address:

Bond No: \_\_\_\_\_

## Maintenance Bond

KNOW ALL MEN BY THESE PRESENTS, that we

\_\_\_\_\_ hereinafter  
called Principal, as Principal, and \_\_\_\_\_,  
a corporation of the State of \_\_\_\_\_, \_\_\_\_\_, hereinafter called Surety, as Surety,  
are held and firmly bound unto

\_\_\_\_\_ hereinafter called Oblige in the sum of \_\_\_\_\_  
DOLLARS, lawful money of the United States of America, to be paid to the said Oblige, or its successors or assigns, to  
the payment of which sum well and truly to be made, we do bind ourselves, our heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

SIGNED, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WHEREAS, the Principal entered into a contract with the said Oblige, dated \_\_\_\_\_,  
for

\_\_\_\_\_  
and,

WHEREAS, the Oblige requires that these presents be executed on or before the final completion and acceptance of said  
contract and

WHEREAS, said contract was completed and accepted on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall remedy, without  
cost to the Oblige, any defects which may develop during a period of \_\_\_\_\_  
from the date of completion and acceptance of the work performed under the contract, caused by defective or inferior  
materials or workmanship, then this obligation shall be void: otherwise it shall be and remain in full force and effect.

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_, Attorney-in-Fact

## **EXHIBIT E**

### ADDITIONAL CONTRACT DOCUMENTS/SPECIFICATION SECTIONS

1. Uniform General and Supplemental Conditions – Attached
2. Project Schedule – To be attached at a Later Date with the Project GMP

## EXHIBIT F

### APPROVED GENERAL CONDITIONS LINE ITEMS

#### Project Management When Based On-Site

Superintendent	Safety Manager
CPM Scheduler	Project Manager
Project Executive	Field/Office Engineer
Field Office Support Staff	Project Engineer/Expeditor
Assistant Superintendent(s)	

- \* Project Manager/Superintendent bonuses/incentives/rewards shall NOT be included in the General Conditions GMP proposal but may be included in the Construction Phase Fee.

#### Bonds and Insurance

Builder's Risk Insurance	General Liability Insurance
Payment & Performance Bonds	Other General Project Insurance

#### Temporary Utilities

Dumpsters	Temporary Toilets
Monthly Water Costs	Monthly Electrical Costs
Temporary Fire Protection	Street Rental & Barricades
Fencing & Covered Walkways	Monthly Telephone Installation Costs
Temporary Water Distribution & Meters	Temporary Telephone System Installation
Temporary Electrical Distribution & Meters	
Site Erosion Control (BMPs) & Project Entrance(s)	

#### Field Offices & Construction Supplies

Partnering Costs	First Aid Supplies
Job Photos/Videos	Reference Manuals
Reproduction Services	Monthly Office Supplies
Project Specific Signage	Postage/Special Shipping
Remote Parking Expenses	Project/As-Built Drawings
Security System/Watchman	Move-In/Out & Office Setup
Mobilization & Demobilization	Drinking Water & Accessories
Safety Material and Equipment	Employee Identification System
Small Tools and Storage Trailers	Office Clean-Up/Janitorial Services
Monthly Office Trailer Rental Costs	
Project Cleaning at Substantial Completion & Final Acceptance	

- \* All items listed above, are subject to requests for additional information or breakdown.

#### **Items NOT TO BE INCLUDED in the General Conditions GMP line item, but may be included in the CM/DB Contractor's Construction Phase Fee**

Purchase/Lease of Vehicles and Maintenance Costs  
Purchase/Rental of Radios/Communication Equipment  
Purchase/Rental of Jobsite Computer & Electronic Equipment  
Purchase/Rental of Specialized Telephone Systems (including cellular/digital phones)

**Uniform General and Supplementary General Conditions  
for City of Lawton Building Construction Contracts**



## **Table of Contents**

Article 1. Definitions .....	2
Article 2. Laws Governing Construction .....	4
Article 3. General Responsibilities of Owner.....	4
Article 4. General Responsibilities of Architect and Contractor.....	5
Article 5. Bonds & Insurance .....	8
Article 6. Contract Documents .....	12
Article 7. Construction Safety.....	13
Article 8. Quality Control .....	14
Article 9. Project Scheduling Requirements .....	18
Article 10. Payments.....	22
Article 11. Changes .....	24
Article 12. Project Completion and Acceptance.....	28
Article 13. Suspension and Termination .....	31
Article 14. Dispute Resolution .....	33
Article 15. Miscellaneous.....	35

# Uniform General and Supplementary General Conditions for City of Lawton Building Construction Contracts

## Article 1. Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein.

- 1.1 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Oklahoma Statutes, as a landscape architect pursuant to Oklahoma Statutes, a person licensed as a professional engineer pursuant Oklahoma Statutes and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.2 *Change Order* means a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor and the Architect/Engineer.
- 1.3 *Change Order Proposal* means a Contractor-generated document in response to a Change Order Request (COR).
- 1.4 *Change Order Request (COR)* means a document which informs the contractor of a proposed change in the Work, and appropriately describes or otherwise documents such change.
- 1.5 *Close-out documents* means the product brochures, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, as-built record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.6 *Contract* means the entire agreement between the Owner and the Contractor, including all of the Contract Documents.
- 1.7 *Contract Date* is the date when the agreement between the owner and the contractor becomes effective.
- 1.8 *Contract Documents* means those documents identified as a component of the agreement (contract) between the owner and the contractor. These may include, but are not limited to, Drawings, Specifications, General, Supplementary and Special Conditions, and all pre-bid and/or pre-proposal addenda.
- 1.9 *Contractor* means the individual, corporation, company, partnership, firm or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager- at-Risk or a Design-Build firm as well as a General or Prime Contractor. The contract documents refer to *Contractor* as if singular in number.
- 1.10 *Contract Sum* means the total compensation payable to the Contractor for completion of the Work in accordance with the terms of the contract.
- 1.11 *Contract Time* means the period between the Start Date identified in the Notice to Proceed with Construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by Change Order.
- 1.12 *Date of Commencement* means the date designated in the Notice to Proceed for the Contractor to commence the Work.
- 1.13 *Day* means a calendar day, unless otherwise specifically stipulated.
- 1.14 *Drawings* means that product of the Architect/Engineer which graphically depicts the Work.

- 1.15 *Final Completion* means the date determined and certified by the Architect/Engineer and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.16 *Owner* means the City of Lawton.
- 1.17 *Owner's Designated Representative (ODR)* means the individual assigned by the Owner to act on its behalf, and to undertake certain activities as specifically outlined in the Contract. The ODR is the only party authorized to direct changes to the scope, cost, or time of the contract.
- 1.18 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all contract and warranty obligations.
- 1.19 *Samples* means representative physical examples of materials, equipment or workmanship, used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.20 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and Architect/Engineer.
- 1.21 *Shop Drawings* means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor or its agents, which detail a portion of the Work.
- 1.22 *Site* means the geographical area of the location of the Work.
- 1.23 *Special Conditions* means the documents containing terms and conditions, which may be unique to the project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions.
- 1.24 *Specifications* means the written product of the Architect/Engineer that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.25 *Subcontractor* means a business entity that enters into an agreement with the Contractor to perform part of the Work or to provide services, materials or equipment for use in the Work.
- 1.26 *Substantial Completion* means the date determined and certified by the Contractor, Architect/Engineer and Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.27 *Supplementary General Conditions* means procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions. ***The City of Lawton has adopted Uniform Supplementary General Conditions that apply to all City of Lawton and component institution construction projects. The City of Lawton Uniform Supplementary General Conditions are indicated by the bold and italicized typeface shown here.***
- 1.28 *Unit Price Work* means Work or a portion of the Work paid for based on incremental units of measurement.
- 1.29 *Unilateral Change Order (ULCO)* means a Change Order issued by the Owner without the agreement of the Contractor.
- 1.30 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for the Contractor, and/or its agents, to fulfill the Contractor's obligations under the Contract.

## Article 2. Laws Governing Construction

- 2.1. Environmental Regulations. The Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment, and its protection at all times. Unless otherwise specifically determined, the Owner is responsible for obtaining and maintaining permits related to stormwater run-off. The Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to site, including hazardous materials, and all such items brought to the site by its subcontractors and suppliers, or by other entities subject to direction of the Contractor. The Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 2.2. Disputes - Law, Jurisdiction and Venue. Jurisdiction and venue for any dispute arising from this contract will be in a court of competent jurisdiction in Comanche County, Oklahoma, or the federal Western District of Oklahoma.
- 2.3. Licensing of Trades. The Contractor shall comply with all applicable provisions of Oklahoma state law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event the Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, the Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to the Owner.
- 2.4. Royalties, Patents & Copyrights. The Contractor shall pay all royalties and license fees, defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.
- 2.5. State Sales and Use Taxes. The Owner qualifies for exemption from certain State and Local Sales and Use Taxes pursuant to the provisions of Oklahoma Statutes, Title 68. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as prescribed by the Oklahoma Tax Commission. ***Owner is not required to reimburse Contractor for taxes paid on items that qualify for tax exemption.***

## Article 3. General Responsibilities of Owner

- 3.1. Owner's General Responsibilities. The Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
  - 3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed with Construction, a conference will be convened for attendance by the Owner, Contractor, Architect/Engineer (A/E) and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the project site, and general administration of the Project.

Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the project team members.
  - 3.1.2 Owner's Designated Representative. Prior to the start of construction, Owner will identify the Owner's Designated Representative (ODR), who has the express authority to act and bind the Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
    - 3.1.2.1 Unless otherwise specifically defined elsewhere in the contract documents,

the ODR is the single point of contact between the Owner and Contractor. Notice to the ODR, unless otherwise noted, constitutes notice to the Owner under the Contract.

3.1.2.2 All directives on behalf of the Owner will be conveyed to the Contractor by the ODR in writing.

3.1.3 Owner Supplied Materials and Information.

3.1.3.1 The Owner will furnish to the Contractor those surveys describing the physical characteristics, legal description, limitations of the site, site utility locations, and other information used in the preparation of the Contract Documents.

3.1.3.2 The Owner will provide information, equipment, or services under the Owner's control to the Contractor with reasonable promptness.

3.1.4 Availability of Lands. The Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by the Contractor. The Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. The Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.

3.1.5 Limitation on Owner's Duties

3.1.5.1 The Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. The Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. The Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Owner is not responsible for the acts or omissions of Contractor, or any of its subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of the Contractor.

3.1.5.2 The Owner will not take any action in contravention of a design decision made by the A/E in preparation of the Contract Documents when such actions are in conflict with statutes under which the A/E is licensed for the protection of the public health and safety.

## **Article 4. General Responsibilities of Architect and Contractors**

4.1 Role of Architect/Engineer. Unless specified otherwise in the Contract between the Owner and the Contractor, the A/E shall provide general administration services for the Owner during the construction phase of the project. Written correspondence, requests for information, and shop drawings/submittals shall be directed to the A/E for action. The A/E has the authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to the Contractor by the ODR, upon request.

4.1.1 Site Visits

4.1.1.1 The A/E will make visits to the site at intervals as provided in the A/E's contract agreement with the Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to the Owner.

4.1.1.2 The A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Article

3.1.5.2, the Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.

4.1.2 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by the ODR such clarifications or interpretations will be provided by the A/E consistent with the intent of the Contract Documents. The A/E will issue these clarifications with reasonable promptness to the Contractor as Architect's Supplemental Instruction (ASI) or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, the Contractor shall so notify the Owner in accordance with the provisions of Article 11.

4.1.3 Limitations on Architect/Engineer Authority. The A/E is not responsible for:

- 4.1.3.1 The Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project nor will the A/E supervise, direct, control or have authority over the same.
- 4.1.3.2 The Failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work.
- 4.1.3.3 The Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.
- 4.1.3.4 Acts or omissions of the Contractor, or of any other person or organization performing or furnishing any of the Work.

4.2 Contractor's General Responsibilities. The Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the contract documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. The Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures. ***The Contractor is responsible for visiting the site and being familiar with local conditions such as the location, accessibility, and general character of the site and/or building.***

- 4.2.1 Project Administration. The Contractor shall provide project administration for all subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of the A/E and ODR in accordance with these General Conditions and provisions of Division 1 Specifications, and as outlined in the Pre-construction Conference.
- 4.2.2 Contractor's Superintendent. Employ a competent resident superintendent who will be present at the Project Site during the progress of the Work. The superintendent is subject to the approval of the ODR. Do not change approved superintendents during the course of the project without the written approval of the ODR unless the superintendent leaves the employ of the Contractor.
- 4.2.3 Labor. Provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents. Maintain good discipline and order at the Site at all times.
- 4.2.4 Services, Materials, and Equipment. Unless otherwise specified, provide and full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.
- 4.2.5 Non-Compliant Work. Should the A/E and/or the ODR identify Work as non-compliant with the Contract Documents, the ODR will communicate the finding to the Contractor and the Contractor will correct such Work at its expense. The approval of Work by either the A/E or ODR does not relieve the Contractor from the obligation to

comply with all requirements of the Contract Documents.

- 4.2.6 Subcontractors. Do not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom the Owner may have reasonable objection. The Owner will communicate such objections in writing. The Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom the Contractor has reasonable objection. The Contractor will not substitute Subcontractors without the acceptance of the Owner.
- 4.2.6.1 All Subcontracts and supply contracts shall be consistent with and bound to the terms and conditions of the Contract Documents including provisions of the Agreement between the Contractor and the Owner.
- 4.2.6.2 The Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through the Contractor. Furnish to the Owner a copy of each first-tier subcontract promptly after its execution. The Contractor agrees that the Owner has no obligation to review or approve the content of such contracts and that providing the Owner such copies in no way relieves the Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the subcontractor to be bound to the Contractor in the same manner in which the Contractor is bound to the Owner.
- 4.2.7 Continuing the Work. Carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with the Owner. Do not delay or postpone any Work because of the pending resolution of any disputes, disagreements or processes, except as the Owner and the Contractor may agree in writing.
- 4.2.8 Cleaning. At all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. The Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion Inspection and, again, upon completion of the Project prior to the final inspection.
- 4.2.9 Acts and Omissions of Contractor, its Subcontractors and Employees. The Contractor is responsible for acts and omissions of his employees and all its subcontractors, their agents and employees. The Owner may, in writing, require the Contractor to remove from the Project any of Contractor's or its subcontractor's employees that the ODR finds to be careless, incompetent, or otherwise objectionable.
- 4.2.10 Indemnification of Owner. The Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Owner and the elected officials, employees, officers, directors, volunteers, and representatives of the Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Owner directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or the Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner, officers or

employees, separate Contractors or assigned contractors, in instances where such negligence causes personal injury, death or property damage.

- 4.2.10.1 The provisions of this Indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 4.2.10.2 Promptly advise the Owner in writing of any claim or demand against the or the Contractor known to the Contractor related to or arising out of the Contractor's activities under this Contract.
- 4.2.11 Ancillary Areas. Operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:
  - 4.2.11.1 Confine all Contractor operations, including storage of materials and employee parking upon the Site of Work, to areas designated by the Owner.
  - 4.2.11.2 The Contractor may erect, at its own expense, temporary buildings that will remain its property. Remove such buildings and associated utility service lines upon completion of the Work, unless the Contractor requests and the Owner provides written consent that it may abandon such buildings and utilities in place.
  - 4.2.11.3 Use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of the Contractor.
  - 4.2.11.4 The Owner may restrict the Contractor's entry to the site to specifically assigned entrances and routes.
- 4.2.12 Separate Contracts. Additional Contractor responsibilities when the Owner awards separate Contracts
  - 4.2.12.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions.
  - 4.2.12.2 The Owner reserves the right to perform operations related to the Project with Owner's own forces.
  - 4.2.12.3 Under a system of separate contracts, the conditions described herein to apply except as may be amended by change order.
  - 4.2.12.4 ***The Contractor shall cooperate with other contractors employed on the project by the Owner, including providing access to site and project information as requested. Accordingly, other contractors employed on the project by the Owner shall cooperate with the Contractor, including providing notice prior to entering work areas and complying with Contractor's Jobsite Safety Protocols.***

## Article 5. Bonds & Insurance

- 5.1. Construction Bonds. The Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Oklahoma Statutes Title 61.
  - 5.1.1. A Performance Bond is required if the Contract Price is in excess of \$100,000, and on projects with Contract Price less than \$100,000, if so selected by the Owner, and listed in the Bidding Documents. The Performance Bond is solely for the protection of the Owner. The Performance Bond is to be for the Contract Sum to guarantee the faithful

performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Owner and shall comply with all relevant provisions of Oklahoma law, specifically including O.S. 61 §§ 1, 2, 216 and 217. The Performance Bond shall be effective through the Contractor's warranty period.

- 5.1.2. A Statutory Payment Bond is required if the Contract Price is in excess of \$100,000 and on projects with Contract Price less than \$100,000, if so selected by the Owner, and listed in the Bidding Documents. The payment bond is to be for the Contract Sum and is payable to the Owner solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a Subcontractor. The form of the bond shall be approved by the Owner and shall comply with all relevant provisions of Oklahoma law, specifically including O.S. 61 §§ 1, 2, 216 and 217.
- 5.1.3. Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Oklahoma and acceptable to the Owner, on the Owner's form, and in compliance with all relevant provisions of Oklahoma law, specifically including O.S. 61 §§ 1, 2, 216 and 217.
- 5.1.4. Power of Attorney. Each bond shall be accompanied by a valid Power-of- Attorney (issued by the surety company and attached, signed and sealed with the corporate embosses seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 5.1.5. Bond Indemnification. The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with all relevant provisions of Oklahoma law, specifically including O.S. 61 §§ 1, 2, and 217. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 5.1.6. Furnishing Bond Information. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Oklahoma law, specifically including O.S. 61 §§ 1, 2, 216 and 217.
- 5.1.7. Claims on Payment Bonds. Claims on payment bonds must be sent directly to the Contractor and his surety in accordance with Oklahoma law 5.1.9 Sureties shall be listed on the US Department of the Treasury's Listing Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).
- 5.2. Insurance Requirements - Contractor shall at all times during the period in which the Contract is in force, provide and maintain insurance of the type and in the limits fully described below:

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.
- 5.3. Worker's Compensation Insurance. The Contractor shall procure and shall maintain during the life of this contract Worker's Compensation Insurance as required by the State of Oklahoma for all of his employees to be engaged in work at the site of the project under this contract, and in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance. In case any class of employees engaged in hazardous work on the

project under this contract is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

- 5.4. Contractor's General Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall procure and shall maintain during the life of this contract, Contractor's General Liability Insurance, Contractor's Property Damage Insurance, and Vehicle Liability Insurance as follows:

Comprehensive General Liability and Bodily Injury:

Bodily Injury                   \$ 125,000.00 per person per  
occurrence Property Damage   \$ 100,000.00 each  
occurrence

Combined Single Limit                   \$1,000,000.00 per occurrence combine limit

Comprehensive Automobile:

Liability, Bodily Injury               \$ 125,000.00 per person per  
occurrence Property Damage   \$ 100,000.00 each  
occurrence

Combined Limit                       \$1,000,000.00 per occurrence combined limit

- 5.5. Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall either,

5.5.1. require each of his subcontractors to procure, and to maintain during the life of his subcontract, Subcontractor's Public Liability Insurance of the type and in the amounts specified in subparagraph

(b) hereof, or

5.5.2. ensure the activities of his subcontractors in his own policy, specified in subparagraph (b) hereof.

- 5.6. Scope of Insurance and Special Hazards. The insurance required under subparagraphs b. and c. hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him, and also against any of the special hazards which may be encountered in the performance of this contract.

- 5.7. Builder's Risk Insurance (Fire and Extended Coverage). Until the project is completed and accepted by the Owner, the Contractor (at the Owner's option) is required to maintain Builder's Risk Insurance (fire and extended coverage) on a one hundred percent (100%) completed value basis on the insurable portion of the project for the benefit of the Owner, the Contractor, and subcontractors as their interests may appear. This provision shall not release the Contractor from his obligation to complete, according to the plans and specifications, the project covered by the contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.

- 5.8. Proof of Carriage of Insurance. The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certification will not be canceled or materially altered, except after

ten (10) days written notice has been received by the Owner. The Enrolled Parties will provide certificates of insurance to Owner as evidence that policies specified in this section providing the required coverage, conditions, and limits are in full force and effect.

5.9. All insurance policies and certificates of insurance will include a requirement providing for thirty (30) days prior written notice to Owner of any cancellation of coverage. If any such notice is given, Owner will have the right to require that a substitute policy be obtained prior to said cancellation with appropriate evidence thereof at the discretion of Owner. The Enrolled Parties and Excluded Parties will immediately notify Owner and will cease operations on the occurrence of any such cancellation and will not resume operations until the required insurance is in force and new certificates of insurance have been filed with Owner.

5.10. Prime Contractors shall require all Subcontractors of all tiers to provide proof of similar insurance if maintained by the Subcontractors. Such insurance shall be issued by insurance companies acceptable to the Owner. The insurance specified may be provided in a policy or policies, and written on a primary or excess basis.

5.10.1. Policies must include the following clauses:

5.10.1.1. Endorsement to provide a minimum of thirty (30) days advance notice of cancellation, non-renewal, or material change of policies. Reference to the Cancellation endorsement to the policy shall be specified in the Certificate of Insurance and a copy attached to the Certificate of Insurance.

5.10.1.2. This insurance shall apply as primary insurance/non-contributory with respect to any other insurance or self-insurance programs available to the City of Lawton. Reference to the as primary/non-contributory endorsement to the policy shall be specified in the Certificate of Insurance and a copy attached to the Certificate of Insurance.

5.10.1.3. Owner shall be named as an Additional Insured on a Primary and Non-Contributory basis for ongoing and completed operations on all policies except workers compensation and to the full extent allowable by law". Reference to the Additional Insured endorsement to the policy shall be specified in the Certificate of Insurance and a copy attached to the Certificate of Insurance.

5.10.1.4. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each Subcontractor performing work under the Contract, at the Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. The Contractor's certificate of insurance shall note in such event that the Subcontractors are included as additional insureds and that Contractor agrees to provide Workers' Compensation in accordance with Oklahoma law for the Subcontractors and their employees. The Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. The Contractor must retain the certificates of insurance for the duration of the Contract plus 5 years and shall have the responsibility of enforcing these insurance requirements among its subcontractors. The Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

## **Article 6. Contract Documents**

## 6.1. Drawings and Specifications

- 6.1.1 Ownership of Drawings and Specifications. Ownership of drawings, specifications and copies thereof shall be governed by the contract between the Owner and the A/E." The Contractor will be furnished, free of charge, the number of complete sets of the Drawings and Specifications as provided in the Bidding Documents, Supplementary General Conditions or Special Conditions.
- 6.1.2 Interrelationship of and Documents and Resolution of Conflicts. Where conflicts may exist between and/or within the Contract Documents, the higher quality, greater quantity, more restrictive, and/or more expensive requirement shall be **required**. The Contractor shall notify the A/E and the ODR **of any conflict before** executing the work in question. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets. The Contract Documents as referenced in the Agreement between the Owner and the Contractor are complimentary, and what is required by one shall be as binding as if required by all.
- 6.1.3 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to pricing or commencing the Work, the Contractor shall examine and compare the Contract Documents, information furnished by the Owner, relevant field measurements made by the Contractor and any visible or reasonably anticipated conditions at the site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
- 6.1.4 Discrepancies and Omissions in Drawings and Specifications
- 6.1.4.1 ***The Owner does not warrant or make any representations as to the accuracy or completeness of the information furnished to the Contractor by the Owner.*** The Contractor shall promptly report to the ODR and to the A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.
- 6.1.4.2 It is recognized that the Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
- 6.1.4.3 It is further recognized that the Contractor's examination of contract documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm.
- 6.1.4.4 When performing as a Design-Build firm, the Contractor has sole responsibility for discrepancies, errors, and omissions in the drawings and specifications.
- 6.1.4.5 When performing as a Construction Manager-at-Risk, the Contractor has a shared responsibility for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, the Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints, but does not establish a liability for design.
- 6.1.4.6 The Contractor has no liability for errors, omissions, or inconsistencies unless the Contractor knowingly failed to report a recognized problem to the Owner or the Work is executed under a Design-Build contract as outlined above. Should the Contractor fail to perform the examination and reporting obligations of these provisions, the Contractor is responsible for avoidable costs, direct, and/or consequential damages.

## 6.2 Requirements for Record Documents

Maintain at the Site one copy of all Drawings, Specifications, addenda, approved Submittals, Contract modifications, and all Project correspondence. Keep current and maintain Drawings and

Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and A/E access to these documents.

- 6.2.1 Maintain this record set of Drawings and Specifications which reflect the "As Constructed" conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by the Owner and its representatives and agents.
- 6.2.2 Update the "As-Constructed" Drawings and Specifications monthly prior to submission of periodic partial pay estimates. Failure to maintain such records constitutes cause for denial of a progress payment otherwise due.
- 6.2.3 Prior to requesting Substantial Completion Inspection by the ODR and A/E, furnish a complete set of the marked up "As-Constructed" set maintained at the site and one photocopy of same. Concurrently with furnishing these record drawings, furnish a preliminary copy of each operating and maintenance manual (O&M) required by the Contract Documents, for review by the A/E and the ODR.
- 6.2.4 Once determined acceptable, provide mylar prints of professionally drafted "As-Constructed" drawings, along with electronic copy on CD, "As-Constructed" specifications in bound volume(s) along with electronic copy on CD, two sets of photocopies or prints of the mylar "As-Constructed" drawings, two sets of operating and maintenance manuals, two sets of approved submittals, and other record documents as required elsewhere in the Contract Documents. ***All electronic copies shall be provided in a format acceptable to the ODR.***

## **Article 7. Construction Safety**

- 7.1. General. It is the duty and responsibility of the Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law 91-596, 29 U.S.C. §§651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. The Contractor shall prepare a Safety Plan specific to the Project and submit it to the ODR and A/E prior to commencing Work. In addition, the Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 7.2. Notices. The Contractor shall provide notices as follows:
  - 7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
  - 7.2.2 Coordinate the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDS for all materials in use on site throughout the construction phase and make such file available to the Owner and its agents as requested.
- 7.3. Emergencies. In any emergency affecting the safety of persons or property, the Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
  - 7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
  - 7.3.2 Give the ODR and A/E prompt notice of all such events.

- 7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify the Owner within 72 hours of the emergency response event.
- 7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due the Contractor.
- 7.4. Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify the ODR and other parties as may be directed within twenty-four (24) hours of the event.
  - 7.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
  - 7.4.2 Supply the ODR and A/E with an incident report no later than 36 hours after the occurrence of the event. In the event of a catastrophic incident (one fatality or three workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide the ODR with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 7.5. Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify the ODR immediately.
  - 7.5.1 Bind all Subcontractors to the same duty.
  - 7.5.2 Upon receiving such notice, the ODR will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, the ODR will issue a written report to the Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
  - 7.5.3 The Owner may hire third-party contractors to perform any or all such steps.
  - 7.5.4 Should compliance with the ODR's instructions result in an increase in the Contractor's cost of performance, or delay the Work, the Owner will make an equitable adjustment to the Contract price and/or the time of completion, and modify the Contract in writing accordingly.

## **Article 8. Quality Control**

- 8.1. Materials & Workmanship. The Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. The Contractor shall develop and provide a Quality Control Plan specific to this project and acceptable to the Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.
- 8.2. Testing
  - 8.2.1 Contractor Testing. The Contractor is responsible for coordinating and paying for all routine and special tests required to confirm compliance with quality and performance requirements of the Contract Documents. This "quality control" testing shall include any particular testing required by the Specifications and the following general tests.

- 8.2.1.1. Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
  - 8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
  - 8.2.1.3 Routine, preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
  - 8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 8.2.2 Owner Testing. The Owner shall hire independent Materials Testing Consultant, subject materials and systems incorporated into the Project to routine tests as may be specified or as deemed necessary by the ODR or the A/E to ensure compliance with the quality and/or performance requirements of the Contract Documents and/or with laws, ordinances, rules, regulations and/or orders of any public authority having jurisdiction. The results of such "quality assurance" testing will be provided to the Contractor and, to the extent provided, the Contractor may rely on findings.
- 8.2.3 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to the Owner. Results of all tests shall be provided promptly to the ODR, Architect/Engineer and the Contractor.
- 8.2.4 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the contract requirements, the burden of proof remains with the Contractor, subject to:
- 8.2.4.1 Contractor selection and submission of the laboratory for Owner acceptance.
  - 8.2.4.2 Acceptance by the Owner of the quality and nature of tests.
  - 8.2.4.3 All tests taken in the presence of the Architect/Engineer and/or ODR, or their representatives.
  - 8.2.4.4 If tests confirm that the material/systems comply with Contract Documents, the Owner will pay the cost of the test.
  - 8.2.4.5 If tests reveal noncompliance, the Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
  - 8.2.4.6 Proof of noncompliance with the Contract Documents will make the Contractor liable for any corrective action which the ODR determines appropriate, including complete removal and replacement of non-compliant work or material. (Joe and I need to discuss.)
- 8.2.5 Notice of Testing. The Contractor shall give the ODR and the A/E timely notice of its readiness and the date arranged so the ODR and A/E may observe such inspection, testing or approval.
- 8.2.6 Test Samples. The Contractor is responsible for providing samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.
- 8.2.7 Covering Up Work - If the Contractor covers up any Work without providing the Owner an opportunity to inspect, the Contractor shall, if requested by ODR, uncover and recover the work at Contractor's expense.
- 8.3 Submittals

- 8.3.1 Contractor's Submittals. Submit with reasonable promptness consistent with the Project Schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, the Contractor shall review each submittal for compliance with Contract Documents and certify by approval stamp affixed to each copy. Submittal data presented without the Contractor's certification will be returned without review or comment, and any delay resulting from such certification is the Contractor's responsibility.
- 8.3.1.1 Within twenty-one (21) calendar days of the effective date of the Notice To Proceed with construction, submit to the ODR, and the A/E, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by the Architect/Engineer and Owner. The list shall include shop drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, and all other items identified throughout the specifications.
- 8.3.1.2 Indicate the type of item, contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from the Architect/Engineer and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Show and allow a minimum of thirty (30) calendar days duration after receipt by the Architect/Engineer and ODR for review and approval. If re-submittal is required, allow a minimum of an additional fifteen (15) calendar days for review. Submit the updated submittal register with each request for progress payment. The Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. **Failure to update and provide the submittal schedule/register as required shall constitute cause for Owner to withhold payment otherwise due.**
- 8.3.1.3 Coordinate the submittal register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to the ODR the updated submittal register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the submittal register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.
- 8.3.1.4 By submitting Shop Drawings, Samples or other required information, the Contractor represents and certifies that they have determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.
- 8.3.2 Review of Submittals. A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve the Contractor of responsibility for any deviation from the requirements of the Contract unless the Contractor informs the A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission and obtains the Owner's written specific approval of the particular deviation.
- 8.3.3 Correction and Resubmission. Make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to the A/E and the ODR, when applicable, to any new revisions other than the corrections requested on previous submissions. The Owner

reserves the right to invoice the Contractor for A/E review of submittals after more than two corrections and resubmissions are made.

- 8.3.4 Limits on Shop Drawing Approvals. The Contractor shall not commence any Work requiring a submittal until approval of the submittal. Construct all such work in accordance with approved submittals. Approval of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. The A/E's and ODR's approval, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.
- 8.3.5 No Substitutions Without Approval. The ODR and the A/E may receive and consider the Contractor's request for substitution when the Contractor agrees to reimburse the Owner for review costs and satisfies 8.3.5.1, 8.3.5.2, and 8.3.5.3 in combination with one or more of the items in 8.3.5.4 through 8.3.5.11 of the following conditions, as determined by the Owner. If the Contractor does not satisfy these conditions, the ODR and A/E will return the request without action except to record noncompliance with these requirements. The Owner will not consider the request if the Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly.
- 8.3.5.1 The Contract Documents do not require extensive revisions.
  - 8.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of the A/E and do not result in an increase in cost to the Owner.
  - 8.3.5.3 The request is timely, fully documented, and properly submitted.
  - 8.3.5.4 The Contractor cannot provide the specified product, assembly or method of construction within the Contract Time.
  - 8.3.5.5 The request directly relates to an "or-equal" clause or similar language in the Contract Documents.
  - 8.3.5.6 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents.
  - 8.3.5.7 The requested substitution offers the Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities the Owner must assume.
  - 8.3.5.8 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and the ODR can approve the requested substitution.
  - 8.3.5.9 The Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where the Contractor certifies that the substitution will overcome the incompatibility.
  - 8.3.5.10 The Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where the Contractor certifies they can coordinate the proposed substitution.
  - 8.3.5.11 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where the Contractor certifies that the proposed substitution provides the required warranty.
- 8.3.6 Unauthorized Substitutions at Contractor's Risk. The Contractor is financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified. The Contractor shall reimburse the Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

#### 8.4 Field Mock-up

- 8.4.1 Mockups shall be constructed prior to commencement of a specified scope of work to

confirm acceptable workmanship.

- 8.4.1.1 As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer / finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mockups for systems not part of the project scope shall not be required.
- 8.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to the ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by the Owner.
- 8.4.1.3 The Contractor shall include field mock-ups in their Work Progress Schedule and shall notify the ODR and Architect/Engineer of readiness for review sufficiently in advance to coordinate review without delay.

#### 8.5 Inspection During Construction

- 8.5.1 The Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by the Owner and its agents.
- 8.5.2 The Contractor shall not cover up any work with finishing materials or other building components prior to providing the Owner and its agents an opportunity to perform an inspection of the Work.
  - 8.5.2.1 Should corrections of the Work be required for approval, do not cover up corrected Work until the Owner indicates approval.
  - 8.5.2.2 Provide notification of at least five (5) working days or otherwise as mutually agreed, to the ODR of the anticipated need for a cover up inspection. Should the ODR fail to make the necessary inspection within the agreed period, the Contractor may proceed with cover up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

## **Article 9. Project Scheduling Requirements**

9.1. Contract Time. TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT. The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion and Final Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time, Final Completion within thirty (30) days following Substantial Completion or as otherwise agreed to in writing will cause damage to the Owner and may subject the Contractor to Liquidated Damages as provided in the Contract Documents.

- 9.2. Notice to Proceed. The Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion and Final Completion of the Work.
- 9.3. Work Progress Schedule. Refer to Special Conditions and Division 1 General Requirements for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to the ODR and the A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with full reporting capability. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, and acceptance of all the Work of the Contract. When acceptable to the Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the contract duration.
  - 9.3.1 Schedule Requirements. Submit electronic and paper copy of the initial Work Progress

Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of the Contractor's actual plans for its completion. Organize and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

- 9.3.1.1 Re-submit initial Schedule as required to address review comments from A/E and ODR until such Schedule is accepted as the Baseline Schedule.
- 9.3.1.2 Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner of the accurate depiction of all progress to date and that the Contractor will follow the schedule as submitted in performing the Work.
- 9.3.2 Schedule Updates. Update the Work Progress Schedule and the Submittal Schedule monthly, as a minimum, to reflect progress to date and current plans for completing the Work, and submit paper and electronic copy of the update to the A/E and ODR as directed. The Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. The Contractor may revise the Progress Schedule logic only with the Owner's concurrence when in the Contractor's judgment it becomes necessary for the management of the Work. Identify all proposed changes to schedule logic to Owner and to the A/E via an Executive Summary accompanying the updated schedule for review prior to implementation of revisions.
  - 9.3.3 The Work Progress Schedule is for the Contractor's use in managing the Work and submittal of the Schedule, and successive updates or revisions, is for the information of the Owner and to demonstrate that the Contractor has complied with requirements for planning the Work. The Owner's acceptance of a schedule, schedule update or revision constitutes the Owner's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule.
    - 9.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of the Contractor's proposed sequences and duration.
    - 9.3.3.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute the Owner's consent, alter the terms of the Contract, or waive either the Contractor's responsibility for timely completion or the Owner's right to damages for the Contractor's failure to do so.
    - 9.3.3.3 The Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the contract. Change Orders are the only method of modifying the completion Date(s) and Contract time.
- 9.4. Ownership of Float. Unless indicated otherwise in the Contract Documents, the Contractor shall develop the schedule and their execution plan to provide a minimum of 10 percent total float at the project level at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of the Contractor or the Owner but belongs to the Project and may be consumed by either party as needed on a first-used basis.
- 9.5. Completion of Work. The Contractor is accountable for completing the Work in the time stated in the Contract, or as otherwise amended by Change Order.
  - 9.5.1 If, in the judgment of the Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to ensure timely completion of the entire work or a separable portion thereof, the Contractor, when so informed by the Owner, shall immediately take action to increase the rate of work placement by:
    - 9.5.1.1 An increase in working forces.
    - 9.5.1.2 An increase in equipment or tools.

- 9.5.1.3 An increase in hours of work or number of shifts.
  - 9.5.1.4 Expedite delivery of materials.
  - 9.5.1.5 Other action proposed if acceptable to Owner.
- 9.5.2 Within ten (10) calendar days after such notice from the ODR, the Contractor shall notify the ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the project. Should the ODR deem the plan of action inadequate, take additional steps or make adjustments as necessary to its plan of action until it meets with the ODR's approval.
- 9.6 Modification of the Contract Time
- 9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.
- 9.6.2 When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor is entitled to an extension of time. The Owner will make an equitable adjustment and extend the number of calendar days lost because of excusable delay, as measured by the Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project completion date.
- 9.6.2.1 "A Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent the Contractor from performing seven continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, immediately notify the ODR for confirmation of the conditions. At the end of each calendar month, submit to the ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by the ODR, any time extension granted will be issued by Change Order. If the Contractor and Owner cannot agree on the time extension, the Owner may issue a ULCO for fair and reasonable time extension.
- 9.6.2.2 Excusable Delay. The Contractor is entitled to an equitable adjustment of time, issued via change order, for delays caused by the following:
- 9.6.2.2.1 Errors, omissions and imperfections in design which the A/E corrects by means of changes in the drawings and specifications.
  - 9.6.2.2.2 Unanticipated physical conditions at the Site which the A/E corrects by means of changes to the drawings and specifications or for which the ODR directs changes in the Work identified in the Contract Documents.
  - 9.6.2.2.3 Changes in the Work that effect activities identified in the Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by the ODR or the A/E.
  - 9.6.2.2.4 Suspension of Work for unexpected natural events (sometimes called "acts of God"), civil unrest, strikes or other events which are not within the reasonable control of the Contractor.
  - 9.6.2.2.5 Suspension of Work for convenience of the ODR, which prevents Contractor from completing the Work within the Contract Time.
- 9.6.3 The Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of the Contractor's schedule. In the event that the Contractor incurs additional direct costs because of the delay, they are to be determined pursuant

to the provisions of Article 11.

- 9.7 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, the Contractor may not be entitled to a time extension for the period of concurrent delay
- 9.8 Other Time Extension Requests. Time extensions requested in association with changes to the Work directed or requested by the Owner shall be included with the Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by paragraph 9.6.2.1 above. If the Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give the ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) calendar days after the onset of the event or circumstance giving rise to the excusable delay. Provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one **notice of delay** is necessary. State claims for extensions of time in numbers of whole or half calendar days.
- 9.8.1 Within ten (10) calendar days after the cessation of the delay, the Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All Changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 11.
- 9.8.2 No extension of time releases the Contractor or the Surety furnishing a performance or payment bond from any obligations under the contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 9.8.3 Contents of Time Extension Requests. Provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Include with Time Extension Requests a reasonably detailed narrative setting forth:
- 9.8.3.1 The nature of the delay and its cause; the basis of the Contractor's claim of entitlement to a time extension.
- 9.8.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in the Contractor's Work Progress Schedule, and any concurrent delays.
- 9.8.3.3 Description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 9.8.4 Owner's Response. The Owner will respond to the Time Extension Request by providing to the Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by the Contractor.
- 9.8.4.1 The Owner will not grant time extensions for delays that do not affect the Contract Completion Date.
- 9.8.4.2 The Owner will respond to each properly submitted Time Extension Request within fifteen (15) calendar days following receipt. If the Owner cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, the Owner will notify the Contractor in writing. Unless otherwise agreed by the Contractor, the Owner has no more than fifteen (15) additional calendar days to prepare a final response. If the Owner fails to respond within forty-five (45) calendar days from the date the Time Extension Request is received, the Contractor is entitled to a time extension in the amount requested.
- 9.9 Failure to Complete Work Within the Contract Time. **TIME IS OF THE ESSENCE OF THIS CONTRACT**. The Contractor's failure to substantially complete the Work within the Contract Time or to achieve final completion as required will cause damage to the Owner. These

damages may be liquidated by agreement of the Contractor and the Owner, as set forth in the Contract Documents.

- 9.10 Liquidated Damages. The Owner may collect Liquidated Damages due from the Contractor directly or indirectly by reducing the contract sum in the amount of Liquidated Damages stated in the Contract Documents.

## **Article 10. Payments**

10.1 Payments to Contractor. At the request of the Contractor and no more than once per month, the Owner shall make a progress payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this contract. To ensure the proper performance of this contract, the City shall retain 5% of the amount of each estimate. On completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made in full, including retained percentages thereon, less authorized deductions.

10.2 In preparing estimates, the material delivered on the site and preparatory work done may be taken into consideration. All material and work covered by partial payments made shall thereupon become the sole property of the Owner. This provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all the terms of the contract.

10.3 The Owner reserves the right to withhold certain amounts and make application thereof. Specifically, the Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails to do so, then the Owner may, after having served written notice on the said Contractor, pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract. In no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor or his Surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

10.4 The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and other relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract or the Performance and Payment Bond.

10.5 Payments by Contractor. The Contractor shall pay for all transportation and utility services not later than the 20th day of the calendar month following that in which services are rendered, for all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of the cost thereof, not later than the 20th day of the calendar month following that in which said materials, tools, equipment are delivered at the site of the project, and the balance of the cost thereof, not later than the 30th day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used, and to each of his subcontractors, not later than the 5th day following each payment to the Contractor the respective amounts allowed the Contractor on account of the work performed by his subcontractors to the extent of each subcontractor's interest therein.

10.6 The Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal,

supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to the ODR at the time of Contract execution. Thereafter grant the Owner during normal business hours access to said notarized copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.

10.7 Progress Payments. The Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on site, or as otherwise agreed to by the Owner and the Contractor. Payment is not due until receipt by the ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions or Division 1 Specifications, and certified by the A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. The Owner will not process progress payment applications for Change Order work until all parties execute the Change Order.

10.8 Certification by Architect/Engineer. Within five days or earlier following the A/E's receipt of the Contractor's formal invoice, the A/E will review the application for progress payment for completeness, and forward to the ODR. The A/E will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Invoice is incomplete, the Contractor shall make the required corrections and resubmit the Invoice for processing.

10.9 Owner's duty to pay. The Owner has no duty to pay the Contractor except on receipt of; 1) a complete Invoice certified by the A/E and 2) the Contractor's updated Work Progress Schedule, and 3) confirmation that the Contractor's as-built documentation at the site is kept current.

10.10 Payment for stored materials and/or equipment confirmed by the Owner and A/E to be on-site or otherwise properly stored may be limited to 85 percent of the invoice price or 85 percent of the scheduled value for the materials or equipment, whichever is less.

10.11 Retainage. The Owner will withhold from each progress payment, as retainage, an amount as set forth in O.S. 61 § 226. The Contractor shall provide written consent of its Surety for any request for reduction or release of retainage. At least sixty-five (65) percent of the total Contract must be completed before the Owner can consider a retainage reduction or release.

10.12 Price Reduction to Cover Loss. The Owner may reduce any Periodic Invoice, or application for Progress Payment, prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor including, but not limited to:

- 10.12.1 Defective or incomplete Work not remedied.
- 10.12.2 Damage to Work of a separate Contractor.
- 10.12.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time.
- 10.12.4 Persistent failure to carry out the Work in accordance with the Contract Documents.
- 10.12.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the contract sum.
- 10.12.6 Assessment of fines for violations of Prevailing Wage Rate law; or
- 10.12.7 Failure to include the appropriate amount of retainage for that periodic progress payment.
- 10.12.8 Title to all material and Work covered by progress payments transfers to the Owner upon payment.
- 10.12.9 Transfer of title to Owner does not relieve the Contractor of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance of the entire Work, or the restoration of any damaged Work, or waive the right of the Owner to require the fulfillment of all the

terms of the Contract.

10.13 Progress payments to the Contractor do not release the Contractor or its surety from any obligations under this Contract.

10.13.1 Upon the Owner's request, the Contractor shall furnish proof of the status of Subcontractor's accounts in a form acceptable to the Owner.

10.13.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by the Contractor.

10.13.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.

10.13.4 The date the performance of service is complete is the date when the Owner's representative approves the application for payment.

10.14 Off-Site Storage. With prior approval by the Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by the Owner.

10.14.1 Store materials in a location approved by the Owner.

10.14.2 Provide and maintain adequate insurance, at levels acceptable to the Owner, covering the materials stored.

10.14.3 Inspection by Owner's representative is allowed at any time. The Owner's Inspectors must be satisfied with the security, control, maintenance, and preservation measures.

10.14.4 Materials for this project are physically separated and marked for the project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.

10.14.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.

10.14.6 With each monthly payment estimate, submit a report to the ODR, A/E, and Inspector listing the quantities of materials already paid for and still stored in the off-site location.

10.14.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.

10.14.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by the ODR. The full provisions of Performance and Payment Bonds on this project cover the materials off-site in every respect as though they were stored on the Project Site.

## Article 11. Changes

11.1. Change Orders. A Change Order issued after execution of the Contract is a written order to the Contractor, signed by the ODR, the Contractor, and the Architect/Engineer, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by the Contractor indicates his agreement with it, including the adjustment in the Contract Sum and/or the Contract Time. The ODR may issue written authorization for the Contractor to proceed with work of a change order in advance of final execution by all parties. ***In the absence of an agreement with the Contractor on a Change Order, the Owner may issue***

***a Unilateral Change Order that will have the full force and effect of a contract modification. The issuance of a Unilateral Change Order does not prejudice the Contractor's rights to make claims or to appeal disputed matters under terms of the Contract.***

- 11.1.1 The Owner, without invalidating the Contract, ***and without approval of the Contractor's Surety***, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order.
- 11.1.2 The parties acknowledge that the specifications and drawings may not be complete or free from errors, omissions or imperfections and that they may require changes or additions in order for the work to be completed to the satisfaction of Owner. Therefore, and notwithstanding any other provisions in this Contract, the parties agree that any errors, omissions or imperfections in the specifications and drawings, or any changes in or additions to them or to the work ordered by Owner and any resulting delays in the work or increases in Contractor's costs and expenses, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of contract, *quantum meruit*, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties. The parties agree that the Change Order sum, together with any extension of time contained in the Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise that are incident to, arise out of, or result directly or indirectly from or indirectly from the work performed by Contractor under such Change Order.
- 11.1.3 Procedures for administration of Change Orders shall be established by the Owner and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.
- 11.1.4 Except as provided above, no order, oral statement, or direction of the Owner or his duly appointed representative shall be treated as a change under this article or entitle the Contractor to an adjustment.
- 11.1.5 The Contractor agrees that the Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of the Contractor. Further, the Contractor agrees to include in all its subcontracts a provision giving the Owner or any of its duly authorized representatives access to and the right to examine any directly pertinent books, documents, papers and records of any subcontractor relating to any claim arising from this Contract, whether or not the subcontractor is a party to the claim. The right of access and examination described herein shall continue for the duration of any claims brought under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of this Contract until final disposition of such claims, appeals or litigation.
- 11.2. Unit Prices: The Contract Documents may require the Contractor to provide certain work or materials on the basis of unit prices. If the quantity originally contemplated in determining any unit price is ***materially*** changed such that application of the agreed unit price to the actual quantity of work required will cause substantial inequity to the Owner or the Contractor, the applicable unit price shall be equitably adjusted as provided in the Special Conditions or as agreed to by the parties and incorporated into Change Order.
- 11.3. Claims for Additional Costs

- 11.3.1 The Contractor shall provide written notice to the Owner and the Architect/Engineer within twenty-one (21) days of the occurrence of any event or the discovery of any condition that the Contractor claims will cause an increase in the Contract Sum or Contract Time that is not related to a requested change. The Contractor shall not proceed with any work for which it will assert a claim for additional cost or time before providing the written notices, except for emergency situations governed by Article 7.3. Failure to provide the required notices is sufficient grounds for rejecting any claim for an increase in the Contract Sum or the Contract Time arising from the event or the condition. Any adjustment in the Contract Sum or Contract Time for any additional Work shall be authorized by Change Order.
- 11.3.2 The notice provisions of Article 11.3.1 apply to, but are not limited to, any claims for additional cost or time brought by the Contractor as a result of: 1) any written interpretation of the Contract Documents, 2) any order by the Owner to stop the Work pursuant to Article 14 where the Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Article 11.4.
- 11.3.3 Should the Contractor or his Subcontractors fail to call attention of the A/E to obvious discrepancies or omissions in the Bid/Proposal Documents during the pre-bid/pre-proposal period, but claim additional costs for corrective work after contract award, the Owner may assume intent to circumvent competitive bidding for necessary corrective work. In such case, the Owner may choose to let a separate contract for the corrective work, or issue a Unilateral Change Order to require performance by the Contractor. Claims for time extensions or for extra cost resulting from delayed notice of contract document discrepancies or omissions will not be considered by the Owner.
- 11.4. Minor Changes. The A/E, with concurrence of the ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which the Contractor shall carry out promptly and record on as-built record documents.
- 11.5. Concealed Site Conditions. If, in the performance of the Contract, subsurface, latent or concealed conditions at the site are found to be materially different from the information included in the bid/proposal documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in work of the character shown and specified, the ODR and the Architect/Engineer shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, the Architect/Engineer, with the approval of the ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of the ODR.
- 11.6. Extension of Time. All Changes to the Contract Time shall be made as a consequence of requests as required under Article 9.6, and as documented by Change Order as provided under Article 11.1.
- 11.7. Administration of Change Order Requests  
All changes in the Contract shall be administered in accordance with procedures approved by the Owner, and when required make use of such electronic information management system(s) as the owner may employ.
- 11.7.1 Routine changes in the Construction Contract shall be formally initiated by the Architect/Engineer by means of a Change Request form detailing requirements of the proposed change for pricing by the Contractor. This action may be preceded by communications between the Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by the Contractor. Except for emergency conditions described below, approval of the Contractor's cost proposal by the Architect/Engineer

and ODR will be required for authorization to proceed with the Work being changed. The Owner will not be responsible for the cost of work changed without prior approval and the Contractor may be required to remove work so installed.

11.7.2 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between the Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, the ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.

11.7.3 Emergency changes to save life or property may be initiated by the Contractor alone (see Article 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.

**11.7.4 *The method of incorporating approved changes into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to the ODR.***

#### 11.8. Pricing Change Order Work

11.8.1 All proposed costs for change order work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by the A/E and ODR using current estimating guides and/or practices.

11.8.1.1 Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by the ODR.

11.8.1.2 Contractor shall provide written response to change request within 10 calendar days of receipt.

**11.8.1.3 *If the parties cannot agree on an equitable adjustment for labor hours attributable to a change, they shall use the Means Facility Cost Data as a guide for labor hours as a basis of negotiation.***

**11.8.1.4 *If the parties cannot agree on an equitable adjustment for equipment rental charges attributable to a change, they shall use the Rental Rate Blue Book for Construction Mobilization as a basis of negotiation.***

11.8.2 The amounts that the Contractor and/or its Subcontractors add to a Change Order for profit and overhead will also be considered by the Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to the Owner.

11.8.2.1 For work performed by its forces, the Contractor will be allowed their actual costs for materials, the total amount of wages paid for labor, the total cost of Social Security Tax and of Worker's Compensation and Comprehensive General Liability Insurance, plus Bond cost if the change results in an increase in the Bond premium paid by the Contractor. To the total of the above costs, the Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general Home Office expenses, and no separate allowance will be made therefore. Allowable percentages for overhead and profit on changes will not exceed 15 percent if the total of self-performed work is less than or equal to \$10,000, 10 percent if the total of self-performed work is between \$10,000 and \$20,000 and 7.5 percent if the total of self-performed work is over \$20,000, for any specific

change priced.

- 11.8.2.1.1** *On contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Build Firm shall NOT be entitled to a percentage mark-up on any change order work unless the Change Order increases the Guaranteed Maximum Price.*
- 11.8.2.2 For subcontracted Work each affected Subcontractor shall figure its costs, add Overhead and Profit at a Not-To-Exceed Total Percentage of 15%, all subcontractor costs shall be combined, and to that total subcontractor cost the Contractor will be allowed to add a maximum mark-up of 10 percent if the total of all subcontracted work is less than or equal to \$10,000, 7.5 percent if the total of all subcontracted work is between \$10,000 and \$20,000 and 5 percent if the total of all subcontractor work is over \$20,000.
- 11.8.2.3 On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. The Owner does not accept and will not pay for additional contract cost identified as indirect, consequential, or as damages caused by delay.

## Article 12. Project Completion and Acceptance

### 12.1. Closing Inspections

- 12.1.1 Substantial Completion Inspection. When the Contractor considers the entire Work or part thereof Substantially Complete, it shall notify the ODR in writing that the Work will be ready for Substantial Completion Inspection on a specific date. The Contractor shall include with this notice the Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, has corrected items where possible, and includes all items scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the building from the use to which it is intended, the Contractor shall not request a Substantial Completion Inspection. The Owner and its representatives will review the list of items and schedule the requested inspection, or inform the Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on the Contractor's list.
- 12.1.1.1 Prior to the Substantial Completion Inspection, the Contractor shall furnish a copy of its marked-up As-Built Drawings and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications or parts for all installed equipment, systems and like items. Delivery of these items is a prerequisite for requesting the Substantial Completion Inspection.
- 12.1.1.2 On the date requested by Contractor, or as mutually agreed upon, the A/E, ODR, the Contractor and other Owner representatives as determined by the Owner, will jointly attend the Substantial Completion Inspection, which shall be conducted by the ODR or their delegate. If the ODR **concurs with the A/E and Contractor in a determination** that the Work is Substantially Complete, the ODR will issue a Certificate of Substantial Completion to be signed by the A/E, Owner and Contractor, establishing the date of Substantial Completion **and identifying responsibilities for security, maintenance, and insurance.** A/E will provide with this certificate a list of punchlist items (the Pre-Final Punchlist) for completion prior to final inspection. This list may include items in addition to those on the

Contractor's punchlist, which the inspection team deems necessary to correct or complete prior to Final Inspection. If the Owner occupies the facility upon determination of Substantial Completion, the Contractor shall complete all corrective Work at the convenience of the Owner, without disruption to Owner's use of the facility for its intended purposes.

- 12.1.2 Final Inspection. The Contractor shall complete the list of items identified on the Pre-Final Punchlist prior to requesting a Final Inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, the Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the Pre-Final Punchlist work, the Contractor shall give written notice to the ODR and A/E that the Work will be ready for Final Inspection on a specific date. The Contractor shall accompany this notice with a copy of the updated Pre-Final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, the ODR, A/E and the Contractor will inspect the Work. The A/E will submit to the Contractor a Final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.
- 12.1.2.1 Correct or complete all items on the Final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the Final Punchlist. Upon completion of the Final Punchlist, notify the A/E and ODR in writing stating the disposition of each Final Punchlist item. The A/E, Owner and Contractor shall promptly inspect the completed items. When the Final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents the ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to the Contractor's right to receive Final Payment.
- 12.1.3 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by the Owner.
- 12.1.4 Purpose of Inspection. Inspection is for determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete punchlist items or failure of the Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not constitute a waiver of the Owner's rights under the Contract or relieve the Contractor of its responsibility for performance or warranties.
- 12.1.5 Additional Inspections
- 12.1.5.1 If the Owner's inspection team determines that the Work is not Substantially Complete at the Substantial Completion Inspection, the ODR or A/E will give the Contractor written notice listing cause(s) of the rejection. The **Contractor** will set a time for completion of incomplete or defective work **as acceptable to the ODR**. Complete or correct all work so designated prior to requesting a second Substantial Completion Inspection.
- 12.1.5.2 If the Owner's inspection team determines that the Work is not complete at the Final Inspection, the ODR or the A/E will give the Contractor written notice listing the cause(s) of the rejection. The **Contractor** will set a time for completion of incomplete or defective work **as acceptable to the ODR**. The Contractor shall complete or correct all Work so designated prior to again requesting a Final Inspection.
- 12.1.5.3 The Contract Agreement contemplates three (3) comprehensive

inspections: the Substantial Completion Inspection, the Final Completion Inspection, and the Inspection of Completed Final Punchlist Items. The cost to the Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of the Contractor. The Owner may issue a Unilateral Change Order deducting these costs from Final Payment. Upon the Contractor's written request, the Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion Inspection is not corrective work for purposes of determining timely completion, or assessing the cost of additional inspections.

12.1.5.4 Phased Completion. The contract may provide, or project conditions may warrant, as determined by the ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the contract related to Closing Inspections, Occupancy and Acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantially Completion certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate **or notice.**

12.2 Owner's Right of Occupancy. The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should the Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, the ODR will notify the Contractor in writing **and identify responsibilities for security, maintenance, and insurance.** Work performed on the premises by third parties on the Owner's behalf does not constitute occupation or use of the Work by the Owner for purposes of this Article. All Work performed by the Contractor after occupancy, whether in part or in whole, shall be at the convenience of the Owner so as to not disrupt Owner's use of, or access to occupied areas of the project.

### 12.3 Acceptance & Payment

12.3.1 Request for Final Payment. Following the certified completion of all work, including all punch list items, cleanup, and the delivery of record documents, the Contractor shall submit a certified Application for Final Payment that includes all sums held as retainage and forward to the A/E and the ODR for review and approval.

12.3.2 Final Payment Documentation. Prior to or with the Application for Final Payment, Contractor shall submit final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, record documents and all other items required by the Contract. Submit Consent of Surety to Final Payment and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, or otherwise satisfied within the period of time required by O.S. 61 § 221, *et seq.* Furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. The Contractor may not subsequently submit a claim on behalf of a subcontractor or vendor unless the Contractor's affidavit notes that claim as an exception.

12.3.2.1 A Maintenance Bond is required as part of the Final Payment Documentation if the Contract Price is in excess of \$100,000, and on projects with Contract Price less than \$100,000, if so selected by the Owner, and listed in the Bidding Documents. The Maintenance Bond is solely for the protection of the Owner. The Maintenance Bond is to be for

the Contract Sum. The form of the bond shall be approved by the Owner and shall comply with Oklahoma Statutes. The Performance Bond shall be effective through the Contractor's warranty period.

- 12.3.3 Architect/Engineer Approval. The A/E will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, the A/E will either 1) return the Application for Final Payment to Contractor with corrections for action and resubmission or 2) accept it, note their approval and send to Owner.
- 12.3.4 Offsets and Deductions. The Owner may deduct from the Final Payment all sums due from the Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, or liquidated damages, the Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, the Owner will identify each deduction, the amount, and the explanation of the deduction on or by the 21st day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including Unilateral Change Order as may be applicable.
- 12.3.5 Final Payment Due. Final Payment is due and payable by the Owner, subject to all allowable offsets and deductions, on the thirty-first (31<sup>st</sup>) day following the Owner's approval of the Application for Payment. If the Contractor disputes any amount deducted by the Owner, the Contractor shall give notice of the dispute on or before the thirtieth (30<sup>th</sup>) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.
- 12.3.6 Effect of Final Payment. Final Payment constitutes a waiver of all claims by the Owner, relating to the condition of the Work except those arising from:
  - 12.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects); and/or
  - 12.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents; and/or
  - 12.3.6.3 Terms of any warranties required by the Contract, or implied by law; and/or
  - 12.3.6.4 Claims arising from personal injury or property damage to third parties.
- 12.3.7 Waiver of Claims. **Submission of an Application for Final Payment by the Contractor** constitutes a waiver of all claims and liens by the Contractor except those specifically identified in writing and submitted to the ODR prior to the application for Final Payment.
- 12.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

## Article 13. Maintenance Bond and Warranties

- 13.1. Contractor's General Warranty. Contractor warrants to the Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. The Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract Price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or

observation by the Owner, Architect/Engineer or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.

- 13.2. Maintenance Bond Period. Except as may be otherwise specified or agreed, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. ***If less than all of the Work is accepted as substantially complete (Partial Substantial Completion), the warranty period for the Work accepted begins on the date of Partial Substantial Completion, or as otherwise stipulated on the Certificate of Partial Substantial Completion for the Work.***
- 13.3. Limits on Maintenance Bond. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
- 13.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of the Contractor.
  - 13.3.2 Normal wear and tear under normal usage after acceptance of the Work by the Owner.
- 13.4. Events Not Affecting Maintenance Bond. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- 13.4.1 Observations by Owner and/or A/E.
  - 13.4.2 Recommendation to pay any progress or final payment by A/E.
  - 13.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents.
  - 13.4.4 Use or occupancy of the Work or any part thereof by Owner.
  - 13.4.5 Any acceptance by Owner or any failure to do so.
  - 13.4.6 Any review of a Shop Drawing or sample submittal; or
  - 13.4.7 Any inspection, test or approval by others.
- 13.5. Separate Warranties. If a particular piece of equipment or component of the Work for which the contract requires a separate warranty is placed in continuous service before Substantial Completion, the Warranty Period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and the Contractor. The ODR will certify the date of service commencement in the Substantial Completion Certificate.
- 13.5.1 In addition to the Contractor's warranty and duty to repair, the Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
  - 13.5.2 The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract, the Contractor remains liable to the Owner on all elements of the required warranty not provided by the assigned warranty.
- 13.6. Correction of Defects. Upon receipt of written notice from the Owner, or any agent of the Owner designated as responsible for management of the Warranty Period, of the discovery of a defect, the Contractor shall promptly remedy the defect(s), and provide written notice to the Owner and designated agent indicating action taken. In case of emergency where delay

would cause serious risk of loss or damage to the Owner, or if the Contractor fails to remedy within 30 days, or within another period agreed to in writing, the Owner may correct the defect and be reimbursed the cost of remedying the defect from the Contractor or its Surety.

- 13.7 Certification of No Asbestos Containing Materials or Work. The Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA– 40 CFR 763-99 (7)) from all subcontractors and materials suppliers, and shall provide a notarized certification to the Owner that all equipment and materials used in fulfillment of their contract responsibilities are non Asbestos Containing building Materials (ACBM). This certification must be provided no later than the Contractor's application for Final Payment.

## Article 14. Suspension and Termination

- 14.1. Suspension of Work for Cause. The Owner may, at any time without prior notice, suspend all or any part of the Work if the Owner determines it is necessary to do so to prevent or correct any condition of the Work which constitutes an immediate safety hazard or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.
- 14.1.1 The Owner will give the Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of the notice, the Contractor shall immediately cease all activities related to the identified Work. As soon as practicable following the issuance of a suspension notice, the Owner will conduct an investigation into the circumstances giving rise to the suspension, and issue a written determination of the findings.
- 14.1.2 If the cause of the suspension is due to actions or omissions within the control of the Contractor, the Contractor will not be entitled to an extension of time for delay resulting from the suspension. If the cause of the suspension is something not within the control of the Contractor and the suspension will prevent the Contractor from completing the Work within the Contract Time, the suspension is an Excusable Delay and a Time Extension will be granted through a Change Order.
- 14.1.3 Suspension of work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.
- 14.2. Suspension of Work for Owner's Convenience. Upon seven (7) calendar days written notice to the Contractor, the Owner may at any time without breach of the Contract suspend all or any portion of the Work for its own convenience. Upon resumption of the Work, if the suspension prevents the Contractor from completing the Work within the Contract Time, it is an Excusable Delay. A notice of suspension for convenience may be modified by the Owner at any time on seven (7) calendar days written notice to the Contractor. If the Owner suspends the Work for its convenience for more than 60 consecutive calendar days, the Contractor may elect to terminate the contract pursuant to the provisions of the contract.
- 14.3. Termination by Owner for Cause
- 14.3.1 ***Upon thirty (30) days written notice to the Contractor and its Surety,*** the Owner may, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, under any of the following circumstances:
- 14.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials; and/or
- 14.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any

- public authority having jurisdiction, including the ODR; and/or
- 14.3.1.3 Persistent failure to prosecute the work in accordance with the Contract, and to ensure its completion within the time, or any approved extension thereof, specified in this Contract; and/or
  - 14.3.1.4 Failure to remedy defective work condemned by the ODR; and/or
  - 14.3.1.5 Failure to pay subcontractors, laborers, and material suppliers pursuant to Oklahoma Statutes; and/or
  - 14.3.1.6 Persistent endangerment to the safety of labor or of the Work; and/or
  - 14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the contract; and/or
  - 14.3.1.8 Any material breach of the Contract; and/or
  - 14.3.1.9 The Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the work.
- 14.3.2 Failure by the Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 14.3.3 Upon receipt of a termination notice, the Contractor or its Surety has thirty days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy to the condition(s) upon which the notice of termination was based. If the Owner is satisfied that the Contractor or its Surety can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time.
- 14.3.4 If at the conclusion of the thirty day cure period the Contractor or its Surety is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may **immediately terminate the employment of the Contractor**, make alternative arrangements for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
- 14.3.4.1 Recoverable costs include additional Owner expenses for items such as A/E services, other consultants, and contract administration.
- 14.3.5 The Owner will make no further payment to the Contractor or its Surety until all costs of completing the Work are paid. If the unpaid balance of the Contract Sum exceeds the costs of administering and finishing the Work, the Contractor will receive the excess funds. If costs of completing the Work exceed the unpaid balance, the Contractor or its Surety will pay the difference to the Owner.
- 14.3.5.1 This obligation for payment survives the termination of the Contract.
- 14.3.6 The Owner reserves the right in termination for cause to take assignment of all contracts between the Contractor and its Subcontractors, vendors and suppliers. The ODR will promptly notify the Contractor of the contracts the Owner elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.
- 14.4 Termination for Convenience of Owner. Upon written notice to the Contractor and the A/E, the Owner may, without breach, terminate the Contract for any reason.
- 14.4.1 The notice will specify the reason for and the effective date of contract termination. The notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
  - 14.4.2 Upon receipt of the notice of termination, the Contractor shall immediately proceed with

the following obligations:

- 14.4.2.1 Stop all work.
  - 14.4.2.2 Place no further subcontracts or orders for materials or services.
  - 14.4.2.3 Terminate all subcontracts.
  - 14.4.2.4 Cancel all materials and equipment orders as applicable.
  - 14.4.2.5 Take appropriate action to protect and preserve all property related to this Contract which is in the possession of the Contractor.
- 14.4.3 When the Contract is terminated for the Owner's convenience, the Contractor may recover from the Owner payment for all Work executed **before the notice of termination along with the actual and reasonable cost of any additional work required to secure the project and property related to the Contract following the notice of termination. The Contractor will not be entitled to recover any other costs or damages arising from the termination for convenience of the Owner including, but not limited to, claims for lost profits or lost business opportunities.**
- 14.5 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the ODR, terminate the Contract and recover from the Owner payment for all Work executed **before the work stoppage and the actual and reasonable cost of securing the project and property related to the Contract during the work stoppage. The Contractor will not be entitled to recover any other costs or damages arising from the work stoppage including, but not limited to, claims for lost profits or lost business opportunities.** If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Contractor may not terminate the Contract.
- 14.6 Settlement on Termination. Within 180 days of the effective date of Contract termination for any reason, the Contractor shall submit a final termination settlement proposal to the Owner based upon recoverable costs as provided under the contract. If the Contractor fails to submit a settlement proposal within the time allowed, the Owner may **unilaterally** determine the amount due to the Contractor because of the termination.

## Article 15. Miscellaneous

15.1 Supplemental and Special Conditions. When the Work contemplated by the Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplemental and Special Conditions as described below:

15.1.1 Supplemental Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplemental Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplemental Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.

15.1.2 Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the Uniform General Conditions.

15.2 Federally Funded Projects. On Federally funded projects, the Owner may waive,

suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by the Owner of such Federal funds for the project. In the case of any project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.

15.3 Internet-based Project Management Systems. At its option, the Owner may administer its design and construction management through an Internet-based management system. In such cases, the Contractor shall conduct communication through this media and perform all project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers or payment requests and processing, amendment, change orders and other administrative activities.

15.3.1 Accessibility and Administration.

15.3.1.1 When used, the Owner will make the software accessible via the internet to all project team members.

15.3.1.2 The Owner shall administer the software.

15.3.2 Training. When used, the Owner shall provide training to the project team members.

15.4 EQUAL OPPORTUNITY REQUIREMENTS: For all contracts in excess of \$10,000, the Contractor and all Subcontractors shall comply with Executive Order 11246 entitled "Equal Employment Opportunity", as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR 60).

## **End of Uniform General Conditions**