

DRAFT

AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services (“Agreement”) is made and entered into by and between THE BOARD OF REGENTS for the Oklahoma Agricultural and Mechanical Colleges acting for and on behalf of Insert name of OSU System or A&M College, an agency of the State of Oklahoma, whose principal office and place of business is at 220 Student Union, Stillwater, Oklahoma ("Owner") and Insert Name of CM, whose principal office and place of business is at Address-City-State-Zip Code (“Construction Manager”). This Agreement shall be effective on the date it is executed by the last party to execute it.

WHEREAS, the Owner desires to construct a Project Name (“Project”), located on the Oklahoma State University-Okmulgee campus in Okmulgee, Oklahoma; and

WHEREAS, the Owner has engaged Insert Architectural Firm (“Architect”) as Architect for the Project and has entered into an Agreement for Architectural Services with the Architect (“Owner/Architect Contract”); and

WHEREAS, the Owner has determined that the Project can be accomplished most effectively by retaining the services of a Construction Manager to work with the Owner, its Architect, and the various Subcontractors for the Project, so that Project may be completed and ready for use at the earliest practicable date; and

WHEREAS, the Construction Manager will provide the Owner and the Architect with information and recommendations on construction technology and market conditions to insure that the building design stays within the budget, control the scheduling of construction, manage the procurement effort, superintend and inspect the construction of the building, and provide a wide range of other related services as set forth by this Agreement; and

WHEREAS, the Construction Manager is ready, willing, and able to perform such services; and

WHEREAS, the Owner has agreed to expend an amount up to but not to exceed Insert Dollar Amount in Words & No/100 (\$.00) for construction of the Project (GMP), which amount shall include the Cost of the Work as established by the Construction Manager; a sum established by the Construction Manager for Pre-construction Services; a sum established by the Construction Manager for Construction Phase Management Fee; a sum established by the Construction Manager to cover costs of Direct Project Management Support; and the GMP shall include an Owner contingency, a sum established by the Owner for the Owner’s exclusive use to cover architect/engineering clarifications and/or for added scope of work. All savings are 100% returned to the Owner by deductive change order; and

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is herein acknowledged, the Owner and Construction Manager agree as follows:

ARTICLE 1
REPRESENTATIONS AND AFFIRMATIONS

By executing this Agreement, the Construction Manager makes the following express representations and affirmations to the Owner:

(a) The Construction Manager is professionally qualified to act as the Construction Manager for the Project. It is understood that the Construction Manager is required to provide for the completion, correction, and timely execution of any work that may be required, implied, or inferred by the construction documents, as necessary, to produce the intended result (the "Work");

(b) The Construction Manager will maintain all necessary licenses, or other authorizations necessary to act as Construction Manager for the Project until the Construction Manager's duties hereunder have been fully satisfied;

(c) The Construction Manager has become familiar with the Project site and the local conditions under which the Project is to be designed, constructed, and operated; and

(d) The Construction Manager assumes full responsibility to the Owner for the improper acts and omissions of its employees, subcontractors, or others employed or retained by the Construction Manager in connection with the Project. Any contract by and between the Construction Manager and any employees, subcontractors, or others employed by the Construction Manager shall bind such employees, subcontractors, or others to the Construction Manager to the same extent and degree, and under the same terms and conditions, as the Construction Manager is bound to the Owner.

NOTHING CONTAINED HEREINABOVE SHALL IN ANY MANNER WHATSOEVER SUPERSEDE, LIMIT, OR RESTRICT ANY OTHER REPRESENTATION OR AFFIRMATION SET FORTH ELSEWHERE IN THIS AGREEMENT.

ARTICLE 2
PRE-CONSTRUCTION PHASE
DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

The following pre-construction phase services are to be performed by Construction Manager:

(a) The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, in terms of each other;

(b) The Construction Manager, with the Architect, shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction technology and feasibility; the availability of materials and labor; and other market conditions necessary to insure that the building's design stays within budget; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies;

(c) When Project requirements have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule (Exhibit A) for the Architect's review and the Owner's approval. The Construction Manager shall assist the Owner and the Architect in creating a critical path schedule setting forth all dates related to the Project, including, without limitation, each phase of the Project's design and construction. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and date of Substantial Completion, which date shall be at a date to be mutually acceptable to both parties and to be determined with the setting of the GMP and the construction schedule (Exhibit A). If Project Schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall provide an explanation and make appropriate recommendations to the Owner and Architect;

(d) The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities;

(e) When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume, or similar conceptual estimating techniques;

(f) When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and

refine this estimate at appropriate intervals agreed to by the Owner, Architect, and Construction Manager;

(g) When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager;

(h) If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall provide an explanation and make appropriate recommendations to the Owner and Architect;

(i) The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design. Plans and specifications will be made available to any parties interested in obtaining them at various stages of the design process. Open meetings will be held to discuss documents with prospective vendors and subcontractors. The Construction Manager, Owner and Architect will determine any prequalification criteria to be used to develop lists of acceptable bidders;

(j) The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. Upon the Owner's acceptance of the Construction Manager's recommendation(s), all contracts for such items shall be entered into by the Construction Manager and actual costs will be reimbursed as Cost of the Work. The Construction Manager shall expedite the delivery of long-lead time items;

(k) The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants;

(l) When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price ("GMP"), which shall be the sum of the estimated Cost of the Work, the Construction Manager's Fee, the Cost of Direct Project Management Services, and the Owner's Construction Contingency;

(m) As the Drawings and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by written amendment;

(n) The GMP shall include the Cost of the Work as established by the Construction Manager; a sum established by the Construction Manager for Pre-construction Services; a sum established by the Construction Manager for Construction Phase Management Fee; a sum established by the Construction Manager to cover costs of Direct Project Management Support; and the GMP shall include an Owner's Construction Contingency, a sum established by the Owner for the Owner's exclusive use to cover architect/engineering clarifications and/or added scope of work. All savings are 100% returned to the Owner by deductive change order;

(o) The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

1. A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal;
2. A list of allowances and a statement of their basis;
3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications;
4. The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the GMP; and
5. The proposed date of Commencement of Construction, the date of Substantial Completion upon which the proposed GMP is based, shall be mutually acceptable to both parties and to be determined with the setting of the GMP and the construction schedule (Exhibit A), and a schedule of the Construction Documents issuance dates upon which the Date of Substantial Completion is based.

(p) The Construction Manager shall meet with the Owner and Architect to review the GMP proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis or both;

(q) The GMP proposal shall not be effective without written acceptance by the Owner. Following acceptance of the GMP, the Owner shall issue a Notice to Proceed;

(r) Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing;

(s) The GMP and its basis shall be set forth as Exhibit B and incorporated herein by reference. The GMP shall be subject to additions and deductions by a change in the Work and the date of Substantial Completion shall be subject to adjustment, with the written approval of the Owner;

(t) The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Paragraph (o) 3 above. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with the schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

ARTICLE 3
CONSTRUCTION PHASE
DUTIES, OBLIGATIONS AND RESPONSIBILITIES

The following construction phase duties, obligations and responsibilities are to be performed by the Construction Manager:

(a) The Construction Phase shall commence upon:

The Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed;

(b) Promptly after the Owner's acceptance of the GMP proposal, the Construction Manager shall prepare and submit for the Owner's and Architect's information a detailed schedule for the construction phase Work which shall conform to the overall project schedule set forth in Article 2. (c). Such detailed schedule shall be set forth as Exhibit A and incorporated herein by reference. The schedule may be revised as necessary at appropriate intervals as required by the conditions of the Work and Project,

(c) Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. If the Construction Manager decides to bid a work package, it must declare this intent during the pre-bid meeting. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect along with a recommendation for award. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted by the Construction Manager. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection;

(d) Subcontracts and agreements with suppliers furnishing materials or equipment shall be advertised and awarded by the Construction Manager in accordance with Oklahoma public bidding laws;

(e) Immediately following the determination of portions of the Work that will be accomplished by the Construction Manager's own work forces, and the award of subcontracts and agreements with suppliers furnishing materials or equipment, the Construction Manager shall submit a proposal to convert the GMP to a Lump Sum Price based on the accepted bids, which shall be the sum of the Cost of the Work, the Construction Manager's Fee, and the Cost of Direct Project Management Services. Upon acceptance by the Owner of the lump sum proposal, the Lump Sum Price and its basis shall be set forth as Exhibit C and incorporated herein by reference. The Lump Sum Price and the date of Substantial Completion shall be subject to additions and reductions by written Change Order.

(f) The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes to the Owner, Architect and Subcontractors;

(g) The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, number of workers and/or subcontractors working on the site, Work accomplished, problems encountered and other similar relevant data as the Owner or the Architect may require. A copy of the log shall be provided to the Owner and Architect;

(h) The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs including usages of the contingency and report the variances to the Owner and Architect at no less than monthly intervals;

(i) The Construction Manager shall ascertain that the Work is accomplished in accordance with the Construction Documents, applicable laws, statutes, ordinances, building codes, rules and regulations and if the Construction Manager recognizes that portions of the Work are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing;

(j) The Construction Manager shall be responsible for review and coordination of the work of its forces and all subcontractors to insure full compliance with all laws, regulations, ordinances, and governmental mandates relating to safety, including but not limited to, all such laws, regulations, ordinances, and governmental mandates pertaining to fire protection, blasting, and excavation. The Construction Manager shall continuously inspect all operations, Work, materials, and equipment and shall be solely responsible for the discovery, determination, correction, and prevention of any and all conditions, which constitute a risk of bodily injury or property damage;

(k) The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance of the Agreement. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons, or property damage, including but not limited to bodily injury or death to persons, resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and orally report the condition to the Owner and Architect immediately, promptly followed by a report in writing; and

(l) The Construction Manager shall create and submit to the Architect detailed and comprehensive construction record drawings depicting all as-built construction. Said drawings shall be submitted to the Architect upon Final Completion of the Project and receipt of same by the Architect shall be a condition precedent to final payment to the Construction Manager.

(m) The Construction Manager shall procure the services of an independent testing laboratory to perform required material testing and will pay for the costs of such tests.

ARTICLE 4 **CONTRACT TIME**

With respect to performance of this Agreement, and the Work, the Owner and the Construction Manager agree as follows:

(a) The Contract Time will be established as approved by the Owner under Article 2. (o) 5., of this Agreement and notwithstanding anything to the contrary contained herein, the date for Substantial Completion shall be at a date to be mutually acceptable to both parties and to be determined with the setting of the GMP;

(b) The term “Substantial Completion,” as used herein, shall mean that stage in the progression of the Work, as certified in writing by the Owner, when the Project is sufficiently complete in accordance with this Agreement that the Owner can enjoy beneficial use or occupancy of the Project and can utilize it for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion; and

(c) All limitations of time are of the essence of this Agreement.

ARTICLE 5 **SERVICE SCHEDULE**

The Construction Manager shall submit for the Owner’s approval a separate schedule for the performances of the Construction Manager’s services, within the Contract Time set forth in **Article 4**, which shall include allowance for time required for the Owner’s review of submissions and for approvals of authorities having jurisdiction over the Project. This schedule,

when approved by the Owner, shall not, except for good cause, be exceeded by the Construction Manager.

ARTICLE 6
PERSONNEL

The Construction Manager shall assign only qualified personnel to perform services required under the Agreement. At the time of execution of the Agreement, the parties anticipate that the following named individuals will perform those functions indicated:

<u>NAME</u>	<u>FUNCTION</u>
_____	Project Manager
_____	Superintendent
_____	Project Director

So long as the individuals named above remain actively employed or retained by the Construction Manager, they shall perform the functions indicated next to their names. Construction Manager shall comply promptly with any request by Owner to replace any personnel performing any service on the Project.

ARTICLE 7
OPTIONAL DUTIES, OBLIGATIONS AND RESPONSIBILITIES
OF THE CONSTRUCTION MANAGER

During the pre-construction and construction phases of the Project, and at all times relevant thereto, the Construction Manager shall have and perform the following duties, obligations and responsibilities if authorized in writing by the Owner, and same shall be paid for by the Owner as provided hereinafter:

- (a) Providing services that are required as a result of significant changes in the scope of the Project made after execution of this Agreement;
- (b) Providing services related to damaged work, provided that such services are required by causes not the responsibility of the Construction Manager or the Construction Manager's subcontractors, whether in whole or in part; and
- (c) Providing services made necessary solely by the default of the Owner or Architect.

ARTICLE 8
PROJECT RECORDS

All records relating in any manner whatsoever to the Project or any designated portion thereof, which are in the possession of the Construction Manager shall be made available to the Owner for inspection and copying upon written request of the Owner. Furthermore, said records shall be made available, upon request by the Owner, to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, photographs, videos, or other writings of things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the time expended by the Construction Manager and its personnel in performing the obligations of this Agreement and the records of performance of said Agreement. The Construction Manager shall maintain and protect these records for no less than four (4) years after final completion of the Project, or for any longer period of time as may be required by law or by good construction management practice.

ARTICLE 9
DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE OWNER

The Owner shall have and perform the following duties, obligations and responsibilities to the Construction Manager:

- (a) The Owner shall provide the Construction Manager with adequate information regarding the Owner's requirements for the Project including any desired or required design or construction schedule, or both, and any budgetary requirements;
- (b) The Owner shall review any documents submitted by the Construction Manager requiring the Owner's decision, and shall render any required decisions pertaining thereto;
- (c) As may be required by law or this Agreement, the Owner may furnish any pre-existing structural, mechanical, chemical and other laboratory tests, inspections and reports;
- (d) In the event the Owner becomes aware of any fault or defect of the Project, nonconformance with any agreement for construction, or of any errors, omissions or inconsistencies in the drawings or specifications, and in the further event that the Owner becomes aware the Construction Manager, through no negligence of the Construction Manager, its subcontractors, consultants, agents or employees, does not have notice of same, prompt notice thereof shall be given by the Owner to the Construction Manager;
- (e) The Owner shall provide the Construction Manager access to the site and to the Work as necessary for the Construction Manager to perform this Agreement;

(f) The Owner shall perform those duties set forth in this Article as expeditiously as may be reasonably necessary for the orderly progress of the Construction Manager's services and of the Work;

(g) The Owner's review of any documents prepared by the Construction Manager or submitted by the Construction Manager, shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's construction program and requirements. No review of such documents shall relieve the Construction Manager of its responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product;

(h) The Owner has appointed and hereby confirms its appointment of the Project Manager to act as Owner's representative in connection with the Project. The Construction Manager is authorized to deal exclusively with the Project Manager for purposes of securing all approvals in connection with the Project;

(i) The Owner shall provide temporary utility services within the Project Site at no charge to the Construction Manager.

(j) The Owner hereby designates Richard S. Krysiak, Jr./Arlene Lanman, as representative authorized to act in its behalf with respect to the Project. The Owner or its representative shall render decisions pertaining to the Project promptly, to avoid unreasonable delay in the progress of the Construction Manager's work.

ARTICLE 10

THE PROJECT ARCHITECT

The Owner has retained _____ as the Architect to perform those duties, obligations and responsibilities as may be set forth by agreement between the Owner and the Architect. With respect to said Architect retained by the Owner, the Construction Manager acknowledges and agrees as follows:

(a) The Construction Manager shall cooperate with the Architect with respect to any duties, obligations, and responsibilities of the Architect including those set forth in the Owner/Architect Contract for executed by and between the Owner and the Architect. The Construction Manager herein acknowledges that it has received, reviewed and studied a true and correct copy of the Contract for and same is herein incorporated by reference. The Construction Manager's duty of cooperation shall include, but shall not be limited to, the duty of providing information to the Architect concerning the Project; the duty of providing requested Project documents to the Architect including those documents identified herein; the duty of meeting and consulting with the Architect concerning any matter relating to the Project; and the duty of working with the Architect with respect to any inspection, testing, or analyses of any work performed on the Project;

(b) The Construction Manager shall review and study any and all analyses, reports, and other similar documents prepared by the Architect and furnished to the Construction

Manager, and the Construction Manager shall incorporate and comply with any recommendations or proposals contained therein if necessary to protect the interest of the Owner and if authorized by the Owner in writing; and,

(c) The duties, obligations and responsibilities of the Construction Manager under this Agreement shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. It is expressly acknowledged and agreed that the duties of the Construction Manager to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.

ARTICLE 11 **ACCOUNTING RECORDS**

The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project. The Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 **COMPENSATION FOR PRE-CONSTRUCTION PHASE SERVICES**

For its assumption and performance of the pre-construction duties, obligations and responsibilities set forth in this Agreement, the Construction Manager shall be paid as follows:

(a) For Work associated the pre-construction duties, obligations and responsibilities for the Project, the stipulated sum of Insert Dollar Amount in Words and No/100 Dollars (\$.00);

(b) Compensation for pre-construction services shall be equitably adjusted if such services extend beyond Insert Date;

(c) Unless otherwise agreed in writing by the Owner, on or before the twenty-fifth (25th) day of each month after commencement of the Work, the Construction Manager shall submit an invoice to the Owner requesting fee payment for services properly rendered;

(d) In the event that the Owner becomes credibly informed that any representations of the Construction Manager as set forth in Paragraph (c) of this Article are wholly or partially inaccurate, the Owner may withhold payment of sums then or in the future otherwise due to the Construction Manager until the inaccuracy, and the cause thereof, is corrected to the Owner's reasonable satisfaction; and,

(e) The Owner shall make payment to the Construction Manager of all sums properly invoiced within thirty (30) days of the Owner's receipt of said invoice.

ARTICLE 13
CONVERSION OF GMP TO LUMP SUM PRICE

Once bids have been received and determination has been made regarding the portions of the Work to be accomplished by Construction Manager's own forces and those to be accomplished by Subcontractors, the GMP will be converted to a Lump Sum Price based on the bids accepted as set forth in Article 3. (e). The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager and the Lump Sum Price shall not exceed the GMP. Costs which would cause the Lump Sum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

ARTICLE 14
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

For its assumption and performance of the construction duties, obligations and responsibilities set forth in this Agreement, the Construction Manager shall be paid as follows:

(a) **Cost of the Work:** Cost of the Work shall include costs necessarily incurred by the Construction Manager in the proper performance of the Work.

1. The Cost of the Work shall only include the following:

a. Wages of construction workers directly employed by the Construction Manager to perform Project construction at the site or at off-site workshops, with the Owner's prior written agreement;

b. Payments made by the Construction Manager to subcontractors in accordance with the requirements of the subcontracts;

c. Costs, including without restriction, transportation of materials and equipment incorporated or to be incorporated into the completed Project, including costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage;

d. Costs, including without restriction, transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost (less salvage value) on such items if not fully consumed, whether sold to others or retained by the

Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value;

e. Rental costs of machinery and equipment;

f. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable;

g. Deposits lost for causes other than the Construction Manager's negligence, willfulness, or failure to fulfill a specific responsibility to the Owner set forth in this Agreement;

h. Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld;

i. Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, policy to be provided to Owner by Construction Manager prior to commencing Work, in case it is necessary to relocate such personnel from distant locations;

j. Owner's Construction Contingency as defined in Article 2(n) or other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

2. Construction Manager's Fee: For its assumption and performance of the construction phase duties, obligations and responsibilities set forth in this Agreement, the Construction Manager shall be paid a Construction Manager's Fee of Insert Dollar Amount based upon a GMP of Insert Dollar Amount (GMP listed within Exhibit B) and at a date to be mutually acceptable to both parties and to be determined with the setting of the GMP and the construction schedule (Exhibit A). The Construction Manager's Fee will be billed and paid in equal monthly installments commencing with the calendar month following commencement of the Construction Phase and concluding 30 days after the date of Substantial Completion of the Work. The Construction Manager's Fee will specifically include the following:

Office overhead and Profit.

3. Cost of Direct Project Management Support: For its assumption and performance of the construction phase duties, obligations and responsibilities set forth in this Agreement, the Construction Manager shall be paid the cost for Direct Project Support in a Not-to-Exceed amount of Insert Dollar Amount based upon a GMP of Insert Dollar Amount (GMP listed within Exhibit B) and at a date to be

mutually acceptable to both parties and to be determined with the setting of the GMP and the construction schedule (Exhibit A). The Cost of Direct Project Support will be billed and paid on an as occurs basis commencing with the calendar month following commencement of the Construction Phase and concluding 30 days after the date of Substantial Completion of the Work. The Cost of Direct Project Support will specifically include the following:

- a. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction manager's principal office or offices other than the site office.
- b. Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and project bonuses for the Project staff based upon benchmarks agreed upon by the Construction Manager and the Owner;
- c. Expenses of the Construction Manager's principal office and offices other than the site office,
- d. Overhead and general expenses.
- e. The Construction Manager's capital expenses, including interest on the Construction manager's capital employed for the Work;
- f. Costs incurred due to the tortious acts or omissions of the Construction Manager; breach of any express or implied warranties, representations and affirmations; or to the failure of the Construction Manager to fulfill its responsibility to the Owner set forth in this Agreement;
- g. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof;
- h. Costs of removal of debris from the site;
- i. That portion directly attributable to this Agreement of premiums for insurance and bonds;
- j. Wages and salaries of the Construction Manager's supervisory and administrative personnel engaged at the project site;

k. Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, in workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work;

l. On-site facilities, including job site mobilization and set up, office trailer and furniture rental, office equipment, and office security and janitorial services;

m. On-site reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, job office utility costs, telephone service at the site and reasonable petty cash expenses of the site office; and

n. Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay;

o. That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work out-of-state, with the prior written approval of the Owner;

p. Cost for temporary toilets, temporary barricades, temporary fencing, fire aid equipment and fire extinguishers during construction, temporary water service, temporary heating/cooling/ventilation, temporary electrical power, temporary weather protection, testing, permitting, daily/weekly/final cleaning, and OSHA / job site signage

q. Notwithstanding anything to the contrary contained elsewhere herein, costs which would cause the Lump Sum Price (or GMP if Lump Sum Price not yet determined) to be exceeded..

r. Costs reasonably incurred by Construction Manager in taking action to prevent threatened damage, injury or loss in case of any emergency affecting the safety of persons and property; and

s. If the Construction Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Construction Manager shall bear all costs of such inspections, tests or approvals as part of the GMP.

4. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if: (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which

to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. All discounts which accrue to the Owner shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 15

PAYMENTS TO CONSTRUCTION MANAGER

With respect to payments to the Construction Manager, the Owner and the Construction Manager agree as follows:

(a) As a condition precedent for any payment due under this Agreement, the Construction Manager shall submit on or before the twenty-fifth (25th) day of each month, unless otherwise agreed to in writing by the Owner, Requests for Payment to the Architect and the Owner requesting progress payment due hereunder and obtain written approval for payment from the Architect. Said Request for Payment shall be in such form and manner, and with such supporting data and content, as the Architect or Owner may require;

(b) In its request for payment, the Construction Manager may request payment for ninety percent (90%) of the portion of the Lump Sum Price (or GMP if Lump Sum Price not yet determined) properly allocable to materials or equipment necessary for the Work and properly stored at the Project site (or elsewhere if approved in advance in writing by the Owner), less the total amount of previous payments received from the Owner. The remaining ten percent (10%) shall be held by the Owner and neither this nor any other retainage under the Project shall be subject to withdrawal by Construction Manager, in whole or in part, at any time. Provided however, upon completion of fifty percent (50%) of the Work, the retainage shall be reduced to five percent (5%) of the amount earned to date if the Owner has first determined that satisfactory progress is being made by the Construction Manager and the Construction Manager's surety approves such decrease. Payment for stored materials and equipment shall be conditioned upon the Construction Manager's proof, satisfactory to the Owner, that the Owner has title to such materials and equipment and shall include proof of required insurance. Each such Request for Payment shall be signed by the Construction Manager and shall constitute the Construction Manager's representation that the Work has progressed to the level for which payment is requested, that the Work has been properly installed or performed in full accordance with this Agreement, and that the Construction Manager knows of no reason why payment should not be made as requested;

(c) Each Request for Payment shall bear the signature of the Construction Manager, which signature shall constitute the Construction Manager's warranty and representation to the Architect and the Owner that the services indicated in the Request for Payment have progressed to the level indicated, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred, that all obligations of the Construction Manager covered by prior invoices have been paid in full, and that, to the best of the Construction Manager's knowledge, information and informed belief, the amount requested

is currently due and owing, there being no reason known to the Construction Manager that payment of any portion thereof should be withheld. Submission of the Construction Manager's Request for Payment shall further constitute the Construction Manager's affirmative representation to the Owner that, upon receipt of the amount invoiced, all obligations of the Construction Manager to others, including its Subcontractors, incurred in connection with the Project, to the level indicated, will be paid in full. The Construction Manager shall also furnish to the Owner properly executed waivers of lien, in a form acceptable to the Owner, from all Subcontractors, materialmen and suppliers wherein said Subcontractors, materialmen and suppliers shall acknowledge receipt of all sums due pursuant to all prior Requests for Payment and waive and relinquish any liens or lien rights relating thereto. Furthermore, the Construction Manager warrants and represents that upon payment of the Request for Payment submitted, title to all Work covered thereby shall immediately pass to the Owner;

(d) Thereafter, the Architect shall review the Request for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Request for Payment and is as required by this Agreement. The Request for Payment, and the Work relating thereto, may also be reviewed by the Owner for the same purposes. The Architect shall determine and approve in writing the amount, in the opinion of the Architect, properly owing to the Construction Manager. The Architect's approval of the Construction Manager's Requests for Payments shall not preclude the Owner from the exercise of any rights as set forth in this Agreement;

(e) The Owner shall make payments to the Construction Manager within thirty (30) days following the Architect's written approval of each Request for Payment. The amount of each payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Construction Manager to the Owner for which the Owner shall have the right to withhold as authorized by this Agreement;

(f) Upon receipt of any payment, or partial payment, from the Owner, the Construction Manager shall promptly pay all Subcontractors, materialmen, laborers, and suppliers such amounts as they are entitled for the Work covered by such payment or partial payment. In the event the Owner becomes informed that the Construction Manager has not paid a Subcontractor, materialman, laborer, or supplier as provided herein, in addition to any other remedies it may have, the Owner shall have the right, but not the duty, to issue future checks and payment to the Construction Manager of amounts otherwise due hereunder naming the Construction Manager and any such Subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future;

(g) No progress payment, or other payment, to the Construction Manager, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute acceptance of any Work not in strict accordance with this Agreement;

(h) The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amount previously paid to the Construction Manager, to protect the Owner from loss because of:

1. Defective Work not timely remedied by the Construction Manager or, in the opinion of the Owner, likely to be remedied by the Construction Manager;
2. Claims, or potential claims of third-parties against the Owner or the Owner's property arising out of acts or omissions of the Construction Manager;
3. Failure by the Construction Manager to pay Subcontractors or others in a prompt and proper fashion;
4. Evidence that the Work will not be completed in the time required for Substantial Completion or final completion;
5. Failure or refusal by the Construction Manager to perform the Work in accordance with this Agreement; or
6. Damage to the Owner or to a third-party to whom the Owner is, or may be, liable, arising out of acts or omissions of the Construction Manager. In the event that the Owner makes written demand upon the Construction Manager for amounts previously paid by the Owner as contemplated in this subparagraph, the Construction Manager shall promptly comply with such demand;

(i) If within thirty (30) days after the date established herein for payment to the Construction Manager by the Owner, the Owner, without cause or basis hereunder, fails to pay the Construction Manager any amounts then due and payable to the Construction Manager, the Construction Manager may stop the Work until payment after first providing ten (10) days written notice to the Owner and the Architect. No interest shall be due the Construction Manager for any late payment by the Owner SAVE AND EXCEPT any interest which may be allowed under the provisions of 62 Okla. Stat. §§ 41.4a and 41.4b;

(j) When the Construction Manager believes that the Work is substantially complete, the Construction Manager shall submit to the Owner and Architect a list of items to be completed or corrected. When the Owner, on the basis of an inspection, determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion (provided such date shall be mutually acceptable to both parties and to be determined with the setting of the GMP and the construction schedule (Exhibit A), shall state the responsibilities of the Owner and the Construction Manager for Project security, maintenance, heat, utilities, damage to the Work, and insurance and shall fix the time within which the Construction Manager shall complete the items listed therein. Guarantees and equipment warranties required by this Agreement shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Construction Manager for its written acceptance of the responsibilities assigned to it in such Certificate. Upon Substantial Completion of the Work, and upon execution by the Construction Manager of the

Certificate of Substantial Completion, the Owner shall pay the Construction Manager an amount sufficient to increase total payments to the Construction Manager to one hundred percent (100%) of the Lump Sum Price (or GMP if Lump Sum Price not yet determined) which includes the Construction Manager's fees plus the Cost of the Work and Direct Project Management Costs less one hundred fifty percent (150%) of the reasonable costs, as determined by the Owner, for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims;

(k) When all of the Work is timely complete and the Construction Manager is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Agreement and this Agreement has been fully performed, the Owner will issue a final Approval for Payment certifying that the Project is complete and the Construction Manager is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Agreement. If the Owner is unable to issue its final Approval for Payment and is required to repeat its final inspection of the Work, the Construction Manager shall bear the cost of such repeat final inspection(s), which costs may be deducted by the Owner from the Construction Manager's final payment;

(l) If the Construction Manager fails to achieve final completion within the time fixed thereof in the Certificate of Substantial Completion, the Construction Manager shall pay the Owner the sum of One Thousand Dollars (\$1,000) per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Agreement. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Construction Manager overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages;

(m) As a condition precedent for final payment, the Construction Manager shall submit to the Owner and the Architect an affidavit that all sums due for labor, material, equipment, supplies, and other liabilities connected with the Work or this Agreement for which the Owner, or the Owner's property, might be responsible have been paid in full and satisfied. As a further condition precedent for payment, the Construction Manager shall furnish to the Owner releases and waivers of lien from all Subcontractors of the Construction Manager and from any and all other parties required by the Owner or the Architect, along with consent of surety, if any, to final payment. If any third-party fails or refuses to provide a release of claim or waiver of lien, or lacking consent of surety, as required by the Owner or the Architect, the Construction Manager shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability. Furthermore, as a condition precedent for final payment, the Construction Manager

shall furnish to the Owner all warranties, operating manuals, instruction manuals, and other similar documents required by this Agreement;

(n) The Owner shall make final payment of all sums due the Construction Manager within forty-five (45) days of the Architect's execution of a final Approval for Payment; and

(o) Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Construction Manager except for those claims previously made in writing against the Owner by the Construction Manager, pending at the time of final payment, and identified in writing by the Construction Manager as unsettled at the time of its request for final payment.

ARTICLE 16 **INDEMNITY**

Construction Manager agrees to indemnify, defend and hold Owner, its Regents, employees and agents harmless from and against liability for any and all claims, demands, costs, penalties, fees (including without limitation, expert witness and attorneys' fees) damages, and liabilities whatsoever for, among other things, bodily injury, death, property damage, personal injury, economic loss and/or products liability asserted by any person or entity, resulting directly or indirectly, in whole or in part, from the acts and/or omissions of Construction Manager and/or its employees, directors, agents, subcontractors and/or consultants arising from or connected with Construction Manager's and/or its employees, directors, agents, subcontractors and/or consultants performance under this Agreement. Construction Manager shall defend such allegations through counsel chosen by the Construction Manager with the advice and approval of the Owner such approval not to be unreasonably withheld. Construction Manager's obligations under this paragraph shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 17 **APPLICABLE LAW**

This Agreement shall be governed by the Laws of the State of Oklahoma, without giving force and effect to its choice of law provisions, and the United State of America. Any legal action in connection with this Agreement shall be filed in District Court of Payne County, Oklahoma or the United States District Court for the Western District of Oklahoma, as appropriate, to which jurisdiction and venue Construction Manager expressly agrees.

ARTICLE 18 **OWNERSHIP OF DESIGN AND CONTRACT DOCUMENTS**

The Contract Documents, which include but are not limited to, the Schematic Design Phase documents and reports, Design Development Phase documents, and the drawings, plans and specifications, Project Records, and any and all other documents or things prepared by the Architect or the Construction Manager for the Project, shall become and be the sole property of the Owner. It is specifically understood and agreed that Owner, without reservation or time

limitation, may use, reproduce, modify, distribute and display all such Project documents produced by the Construction Manager for purposes relating to the Project such as renovation, repair, modification or addition thereto. Owner's right of ownership of such documents shall not be construed as a representation that they are suitable for use on any other project. The Construction Manager shall be permitted to retain copies thereof for its records and for its future professional endeavors. In the event the services of the Construction Manager are, for any reason, terminated prior to completion of the Project, all drawings, sketches, project notes, computations and such are to be delivered to the Owner in their original form and in such other form as reasonably may be required by the Owner. Owner shall not be required to pay any additional compensation to use said documents to complete the Project. If the Owner subsequently reproduces Project-related documents or creates a derivative work based upon Project-related documents, the Owner shall remove or obliterate the original professional seals, logos, and other indications on the documents of the identity of the Construction Manager, unless required by law to remain. The Construction Manager may reproduce at its cost for its records all or any part of this material.

ARTICLE 19
SUCCESSORS AND ASSIGNS

The Construction Manager shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the prior written consent of the Owner. Subject to the preceding, the Owner and the Construction Manager respectively bind themselves, their successors, legal representatives and assigns to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all terms, conditions and covenants of this Agreement.

ARTICLE 20
NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

ARTICLE 21
INSURANCE

The Construction Manager shall purchase and maintain the following insurance in companies properly licensed and satisfactory to the Owner. Such insurance shall be written for not less than the following limits:

(a) Contractor's Liability Insurance

1. Workers Compensation and Employer's Liability

Workers Compensation	Statutory
Employer's Liability:	
Each Accident	<u>\$ 1,000,000.00</u>
Diseases - Policy Limit	<u>\$ 1,000,000.00</u>
Diseases - Each Employee	<u>\$ 1,000,000.00</u>

2. Commercial General Liability (policy coverage shall be on an occurrence basis, and shall include coverage for collapse and underground hazards)

General Aggregate	<u>\$ 2,000,000.00</u>
Products and Completed Operations Aggregate	<u>\$ 2,000,000.00</u>
Personal and Advertising Injury	<u>\$ 1,000,000.00</u>
Each Occurrence	<u>\$ 1,000,000.00</u>
Fire Damage (any one fire)	<u>\$ 500,000.00</u>
Medical Expense (any one person)	<u>\$ 10,000.00</u>

The Contractor shall name the Owner and the Architect as additional insured under Public Liability Insurance. The insurance shall protect the Owner and the Architect from claims arising from operations under this contract.

3. Automobile Liability (policy coverage shall include any auto, hired autos, and non-owned autos)

Combined Single Limit	<u>\$ 1,000,000.00</u>
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4. Excess Liability (Umbrella Form)

Occurrence	<u>\$10,000,000.00</u>
Aggregate	<u>\$10,000,000.00</u>

(b) Property Insurance: Until the work is completed and accepted by the Owner, the Construction Manager shall purchase and maintain property insurance in the All-Risk form (or installation floater) on the full insurable value of the work included under this Agreement.

(c) Prior to the commencement of the Work, Construction Manager shall submit to the Owner valid Certificates of Insurance, Policies of Insurance and amendatory riders or endorsements to Construction Manager's insurance policies, all in form and substance satisfactory to the Owner. Failure of Owner to demand certificates of insurance and/or policies shall not constitute a waiver of the Construction Manager's responsibility to procure insurance. Nor shall review and/or approval by the Owner in any way relieve Construction Manager of its responsibility for furnishing sufficient amounts and coverage of insurance. Said endorsements or

amendatory riders shall indicate that with the respect to said additional insureds, there shall be severability of interests under said insurance policies. The certificates and amendatory riders or endorsements shall clearly indicate the specific coverage and shall contain a provision requiring the giving of written notice to Owner at least thirty (30) days prior to the cancellation, non-renewal or material modification of any such policies, as evidenced by return receipt of United States Certified Mail. Further, said certificates shall also contain a statement therein, by the insurer or its agent, that the coverage evidenced in the certificate meets or exceeds the Owner's requirements in this Article.

(d) If requested by the Owner after the date hereof, the Construction Manager shall promptly procure, at the Owner's expense, liability insurance in such amounts as the Owner may request insuring against perils not listed above.

(e) If the Construction Manager fails to purchase and maintain the liability insurance required hereunder, the Owner may, but shall not be obligated to, purchase such insurance on the Construction Manager's behalf and the Owner shall be entitled to be reimbursed by the Construction Manager.

(f) When any insurance required hereunder, due to the attainment of a normal expiration date or renewal date, shall expire, the Construction Manager shall, not less than thirty (30) days prior to such expiration or renewal date, supply the Owner with updated replacement certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of coverage in the same manner, limits of protection, and scope of coverage, as was provided by the certificates and amendatory riders or endorsements originally supplied.

ARTICLE 22

PERFORMANCE, PAYMENT AND DEFECT BONDS

The Construction Manager shall furnish separate bonds covering faithful performance of the Work, payment of all persons performing labor on the Project under this Agreement and furnishing materials under this Agreement, and defects in materials and workmanship. The surety on each such bond shall be a duly authorized surety company satisfactory to the Owner and licensed to do business in the State of Oklahoma. The amount of each bond shall be equal to 100% of the Lump Sum Price (or GMP if Lump Sum Price not yet determined). The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

ARTICLE 23

CLAIMS BY THE CONSTRUCTION MANAGER

Claims by the Construction Manager are subject to the following terms and conditions:

(a) All Construction Manager claims shall be initiated by written notice of claim submitted to the Owner and the Architect. Such written notice must be furnished within seven (7)

days after the occurrence of the event, or the first appearance of the condition, giving rise to the claim, and same must set forth all facts and circumstances supporting the claim;

(b) Pending final resolution of any claim of the Construction Manager, the Construction Manager shall diligently proceed with performance of this Agreement and the Owner shall continue to make payments to the Construction Manager in accordance with this Agreement. The resolution of any claim under this Article shall be reflected by a written amendment executed by the Owner, the Architect and the Construction Manager;

(c) Should concealed and unknown conditions encountered in performance of the Work (1) below the surface of the ground or (2) in an existing structure be at variance with the conditions indicated by this Agreement, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, the Lump Sum Price (or GMP if Lump Sum Price not yet determined) shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Construction Manager for concealed or unknown conditions, the Construction Manager must give the Owner and the Architect written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Construction Manager to make the written notice and claim as provided by this subparagraph shall constitute a waiver by the Construction Manager of any claim arising out of or relating to such concealed or unknown condition;

(d) If the Construction Manager wishes to make a claim for an increase in the Lump Sum Price (or GMP if Lump Sum Price not yet determined), as a condition precedent to any liability of the Owner therefore, the Construction Manager shall give the Owner and the Architect written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Construction Manager before proceeding to execute any additional or changed Work. The failure by the Construction Manager to give such notice or to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation;

(e) In connection with any claim by the Construction Manager against the Owner for reimbursement and/or compensation in excess of the Lump Sum Price (or GMP if Lump Sum Price not yet determined), any liability of the Owner for the Construction Manager's cost shall be strictly limited to direct cost incurred by the Construction Manager and shall in no event include indirect cost or consequential damages of the Construction Manager, nor shall same include home office overhead, loss of bonding capacity, loss of capital, loss of efficiency, loss of productivity, or loss of profits. The Owner shall not be liable to the Construction Manager for claims of third-parties, including subcontractors, unless and until liability of the Construction Manager has been established therefore in a court of competent jurisdiction; and

(f) If the Construction Manager is delayed in prosecuting any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably

anticipated, fire or any causes beyond the Construction Manager's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Construction Manager to the Owner and the Architect, for such reasonable time as the Owner may determine. A task is critical within the meaning of this subparagraph if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any notice and claim for an extension of time by the Construction Manager shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Construction Manager's basis for requiring additional time in which to complete the Project. In the event the delay to the Construction Manager is a continuing one, only one notice and claim for additional time shall be necessary. If the Construction Manager fails to make such claim as required in this subparagraph any claim for an extension of time shall be waived. FURTHERMORE, IT IS EXPRESSLY AGREED THAT AN EXTENSION OF THE CONTRACT TIME IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE CONSTRUCTION MANAGER IN THE EVENT OF DELAY. IN NO EVENT, AND UNDER NO CIRCUMSTANCES, SHALL THE FEE AGREED UPON HEREIN BE INCREASED FOR, NOR SHALL THE CONSTRUCTION MANAGER CLAIM, RECOVER, OR RECEIVE PAYMENT FOR, ANY COST, LOSS, EXPENSE, DAMAGES, OR COMPENSATION OF ANY KIND OR NATURE BY REASON OF ANY DELAY TO THE PROJECT, WHETHER CRITICAL OR NON-CRITICAL, AND WHETHER CAUSED IN WHOLE OR IN PART BY THE OWNER OR ANYONE ACTING ON THE OWNER'S BEHALF, EXCEPT FOR SUCH DELAYS AS ARE CAUSED SOLELY BY THE DIRECT, ACTIVE AND WILLFUL INTERFERENCE OF THE OWNER IN THE WORK OF THE CONSTRUCTION MANAGER OR SOLELY BY OWNER'S BAD FAITH. EXCEPTING ONLY DIRECT DAMAGES ARISING BECAUSE OF DELAY CAUSED SOLELY BY THE DIRECT, ACTIVE AND WILLFUL INTERFERENCE OF THE OWNER IN THE WORK OF THE CONSTRUCTION MANAGER OR SOLELY BY OWNER'S BAD FAITH, THE CONSTRUCTION MANAGER SHALL NOT BE ENTITLED TO ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, IMPACT, OR OTHER COSTS, LOSSES, EXPENSES, OR DAMAGES, INCLUDING BUT NOT LIMITED TO THE COST OF ACCELERATION OR INEFFICIENCY, ARISING BECAUSE OF DELAY FROM ANY CAUSE WHATSOEVER, WHETHER SUCH DELAY BE REASONABLE OR UNREASONABLE, FORESEEABLE OR UNFORSEEABLE, OR AVOIDABLE OR UNAVOIDABLE.

ARTICLE 24

EQUAL EMPLOYMENT OPPORTUNITY

The Construction Manager shall fully comply with the Equal Opportunities Act, 42 U.S.C. sec. 2000e, et seq., the Equal Opportunity for Individuals with Disabilities Act, 42 U.S.C. sec. 12101 et seq., and all other federal, state, local and other governmental laws and regulations pertaining to equal employment opportunity. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, or national origin. The Construction Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard

to their race, color, religion, sex, handicap or national origin. Such action shall include, but shall not be limited to, the following:

- (a) Employment, upgrading, demotion, or transfer;
- (b) Recruitment or recruitment advertising;
- (c) Layoff or terminations;
- (d) Rates of pay or other forms of compensation; and,
- (e) Selection for training, including apprenticeship.

The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, all notices required by law with respect to the aforesaid policy of nondiscrimination. The Construction Manager will execute such documents, and take such action, as necessary to fully enforce the policy as set forth in this Article and shall submit to the Owner in writing, upon execution of this Agreement, its affirmative action plan for equal employment opportunity for this Project.

ARTICLE 25 **TERMINATION**

This Agreement may be terminated for cause by either party upon seven (7) days' written notice to the other should such other party fail to perform in accordance with its material terms through no fault of the party initiating the termination. Furthermore, this Agreement may be terminated by the Owner without cause for Owner's convenience upon seven (7) days' written notice to the Construction Manager. In the event of such a termination for Owner's convenience, the Construction Manager shall be compensated for all services performed prior to the termination. In such event, the Construction Manager shall promptly submit to the Owner its invoice for final payment and reimbursement which invoice shall comply with the provisions herein.

ARTICLE 26 **ATTORNEYS' FEES**

In the event either party to this Agreement brings suit to enforce any of its provisions, the prevailing party shall be entitled to recover its costs of litigation, including a reasonable attorney's fee to be determined by the court.

ARTICLE 27
RELATIONSHIP OF PARTIES

The relationship of the Owner and Construction Manager is one of Owner and independent contractor and not master and servant or joint venturers. Except as specifically provided herein, the Construction Manager does not have the authority to act for and on behalf of the Owner.

ARTICLE 28
INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Agreement, the Owner and the Construction Manager agree as follows:

(a) Nothing contained in this Agreement shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Construction Manager;

(b) When a word, term, or phrase is used in this Agreement, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

(c) The words "include," "includes," or "including," as used in this Agreement, shall be deemed to be followed by the phrase, "without limitation";

(d) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Agreement shall not imply that any other, non-specified act; failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Agreement;

(e) Words or terms used as nouns in this Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning;

(f) In the event that any term, condition, or provision of this Agreement is determined to be invalid or unenforceable, all other terms, conditions and provisions shall remain in full force and effect. Furthermore, to the extent that any term, condition or provision of this Agreement is contrary to, or conflicts with, any law of the State of Oklahoma, this Agreement shall be deemed amended to comply and conform with said law.

(g) This Agreement specifically incorporates by reference the terms, conditions and provisions of 61 Okla. Stat. §§ 3, 4, 6, 9 and 10 and relevant provisions of §§ 101 et. seq. and §§ 201 et. seq. as if stated verbatim herein.

(h) Reference in this Agreement to a specific law or statute shall be deemed to include and incorporate any subsequent modifications or amendments thereto.

ARTICLE 29
COMPLIANCE WITH LAWS

Throughout the term of this Agreement, Construction Manager shall fully comply with all applicable laws and ordinances and the applicable orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate administrative officers and agencies having jurisdiction, including but not limited to, Executive Order 11246, the Vocational Rehabilitation Act of 1973 (§503), the Americans with Disabilities Act, the Equal Employment Opportunities Act (42 U.S.C. § 2000e, *et seq.*) and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. § 4212 [formerly 2012]).

The Construction Manager and all Subcontractors employed upon the work shall conform to the labor laws of the State of Oklahoma and the various acts amendatory and supplementary thereto; and to all other laws, ordinances and legal requirements applicable thereto including the Federal Register, Vol. 36, No. 74, Part II.

ARTICLE 30
NOTICES

Notices, invoices, communications and payments shall be submitted to the offices identified below. Contractual notices and communications hereunder shall be deemed to have been made three (3) business days after being deposited in the United States mail if given by registered or certified mail, return receipt requested, postage prepaid and addressed to the party to receive such notice or communication at the address given below, or such other address as may hereafter be designated by notice in writing.

OWNER:

CONSTRUCTION MANAGER:

The Board of Regents for the
Oklahoma Agricultural and Mechanical
Colleges acting on behalf of

with copies to:

_____ Project Manager

and copies to:

_____ Architect _____

ARTICLE 31
WAIVER

No waiver of any breach or covenant herein contained shall be construed as a waiver of the covenant itself or of any subsequent breach thereof.

ARTICLE 32
ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Owner and the Construction Manager and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. This Agreement for Construction Management Services may be amended only by written instrument signed by both the Owner and the Construction Manager.

EXECUTED AND DELIVERED as of the day and year first above written.

OWNER:

The Board of Regents for the
Oklahoma Agricultural and Mechanical
Colleges acting for and on behalf of

CONSTRUCTION MANAGER:

By: _____
Douglas E. Burns, Chairman

By: _____

(Date of Execution)

(Date of Execution)

ATTEST:

ATTEST:

[seal]

[corporate seal]

By: _____
W. Douglas Wilson, Executive Secretary

By: _____
Officer of the Corporation

EXHIBIT SCHEDULE

EXHIBIT A	PROJECT SCHEDULE
EXHIBIT B	COST OF WORK
EXHIBIT C	LUMP SUM – (at a later date)

EXHIBIT A
TO THE AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES
PROJECT SCHEDULE

EXHIBIT B
TO THE AGREEMENT FOR CONSTRUCTION MANAGEMENT AT RISK SERVICES
GUARANTEED MAXIMUM PRICE
(ACCEPTED BY OWNER)

Note: Construction Phase Services, Cost of Direct Project Support, Contingency Allowance (percent depends upon degree of construction drawings completed; for example at Design Development, the percent may be 15% or more) of estimated Cost of Work.

Construction Phase (Pre-construction) Services – Lump Sum _____ \$ _____

Construction Phase Management Fee - Lump Sum _____ \$ _____

(List as amount and as percent of Cost of Work)

Includes but is not limited to home and field office, overhead and profit.

List percent fee to be charged on contingency change orders _____ %

Cost of Direct Project Support – Not to Exceed Amount _____ \$ _____

Includes but is not limited to:

- Project Manager
- Project Superintendent
- Assistant Superintendent
- Project Coordinator
- General Superintendent
- Jobsite office trailer rental
- Jobsite fax machine
- Jobsite computers/printers
- Jobsite office furniture
- Ice, cups and water coolers
- Miscellaneous office supplies
- Phone service
- Cell phone service
- Fax machines and office equipment
- Postage/courier expense
- Electrical consumption - jobsite trailer
- Record document reproduction costs
- Miscellaneous printing (bid set by owner)
- Data processing costs
- All required permits and inspections
- Electric consumption during project
- Temporary storage
- Temporary toilets
- Temporary barricades
- Temporary fencing
- First-aid equipment
- Temporary fire protection
- Fire extinguishers
- Project sign
- OSHA/jobsite signage
- Temporary water service
- Temporary heat/cooling/ventilation
- Temporary and final HVAC filters
- Temporary weather protection
- Small tools
- Daily/weekly project cleanup
- Final cleaning
- Waste containers (dumpsters)
- Truck leases

Exhibit B

Agreement for At Risk Construction Management Services

Mileage and material transportation cost
Temporary electric service to building
Required material testing
Premiums for bonds and insurance
And all other direct support items not specifically included in the Pre-construction Services, Construction Phase
Management Fee, or Cost of the Work

Cost of the Work	\$
Includes but is not limited to:	
Subcontractor bids	
Self-performed items	
Subtotal:	\$
Construction Contingency (___%): (including all markups)	\$
CONTRACT TOTAL:	\$

EXHIBIT C
TO THE AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES
LUMP SUM PRICE
(ACCEPTED BY OWNER)