

CONTRACT #
K-1819-133

**Standard Form of Agreement
between Owner and Construction
Manager**

where the Basis of Payment is a Guaranteed Maximum
Price

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion.

AGREEMENT made as of the 9th day of April, 2019.

OWNER:	The City of Norman 201 W Gray Street Norman, OK 73069
And the Construction Manager:	Crossland Construction Company, Inc. 408 NE 145th Place Oklahoma City, OK 73013
Representative:	Ryan Rebsamen
For the Project:	Ruby Grant Park 3110 W Franklin Road Norman, OK 73072
Representative:	Jud Foster
The Consultant is:	Howell & Vancuren 601 S Lewis Avenue Tulsa, OK 74104
Representative:	Joe Howell
The Program Manager is:	ADG, PC 920 W Main Street Oklahoma City, OK 73106
Representative:	Leslie Tabor

The Owner and Construction Manager agree as set forth below:

ARTICLE 1 GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES: The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Consultant in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Consultant, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS: For the Construction Phase, the General Conditions of the contract shall be the City of Norman General Provisions Document, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceeds concurrently, the City of Norman General Provisions Document shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in the City of Norman General Provisions Document shall mean the Construction Manager.

1.3 RULES AND PROCEDURES: The Contractor shall follow the current adopted Rules and procedures established by the State of Oklahoma to ensure compliance with state statutes.

1.4 CONTRACT DOCUMENTS: The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.4 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Consultant and furnished by the Owner as described in Section 2.2.9. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Consultant,

the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

2.1 PRECONSTRUCTION PHASE – PHASE ONE SERVICES

2.1.1 PRELIMINARY EVALUATION: The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

2.1.2 CONSULTATION: The Construction Manager with the Consultant shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Consultant regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; 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.

2.1.3 PRELIMINARY PROJECT SCHEDULE: When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Consultant's review and the Owner's approval. The Construction Manager shall obtain the Consultant's approval of the portion of the preliminary Project schedule relating to the performance of the Consultant's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Consultant 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 proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Consultant.

2.1.4 PHASED CONSTRUCTION: The Construction Manager shall make recommendations to the Owner and Consultant regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES:

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

2.1.5.2 (N/A)When Schematic Design Documents have been prepared by the Consultant and approved by the Owner, the Construction Manager shall prepare, for the review of the Consultant 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, Consultant and Construction Manager.

2.1.5.3 When Design Development Documents have been prepared by the Consultant and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Consultant 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, Consultant and Construction Manager.

2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Consultant.

2.1.6 SUBCONTRACTORS AND SUPPLIERS: The Construction Manager shall seek to develop subcontractor interest in the Project. Subcontractors and suppliers shall be selected and contracts let in strict accordance with the provisions of the Oklahoma Public Competitive Bidding Act, 61 O.S. § 101, et seq. (the "Act"). The Construction Manager represents and warrants to the Owner that: (1) the Construction Manager has sufficient experience with the requirements of the Act to effectively and efficiently solicit and receive bids from potential Subcontractors; (2) the Construction Manager will review all proposed contract documents, bidding materials, including bid notices, and bids received from potential Subcontractors for compliance with the Act; and (3) the Construction Manager will verify that all Work performed under the Contract Documents is performed in accordance with the provisions of the Act. Construction Manager may elect to self-perform portions of the Work provided that the Construction Manager competitively bids the Work under the same terms and conditions as other bidders and the Construction Manager is the lowest responsible bidder for that trade scope of work. All bids shall be made and received in accordance with the provisions of the Act.

2.1.7 LONG-LEAD-TIME ITEMS: The Construction Manager shall recommend to the Owner and Consultant a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

2.1.8 EXTENT OF RESPONSIBILITY: The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. 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. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes

that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Consultant and Owner in writing.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION: The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 When the Drawings and Specifications are sufficiently complete, and after the award of subcontracts to subcontractors, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of all subcontracts, lump sum self-perform amounts, including allowances and contingencies described in Section 2.2.3, the General Conditions, and the Construction Manager's Fee.

2.2.2 The Guaranteed Maximum Price proposal shall include the Project contingency, a sum established by the Owner for the Owner's exclusive use to cover costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. The Owner and the Construction Manager acknowledge that the Project contingency is included in the Guaranteed Maximum Price proposal for costs, which have not been taken into precise account in the establishment of the Guaranteed Maximum Price, including, but not limited to those resulting from:

- (1) scope gaps between Subcontractors;
- (2) costs due to Subcontractor failure that are not paid under applicable bonds or subcontractor default insurance;
- (3) excess costs due to major weather events;
- (4) damage to the Work not recoverable from another party or insurance policy; or
- (5) any other increase in the Cost of the Work due to an unforeseen event or occurrence that is not under the Construction Manager's control.

The Project contingency may be applied by the Construction Manager to any item of cost described above or as defined by the Cost of the Work without the necessity of a modification, without constituting a change in the Work, and without resulting in any change in the Guaranteed Maximum Price. The Construction Manager shall advise the Consultant and the Owner in writing and acquire written acceptance prior to applying a part of the Project contingency as allowed by the Contract Documents.

2.2.3 BASIS OF GUARANTEED MAXIMUM PRICE: The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

2.2.3.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

2.2.3.2 A list of allowances and a statement of their basis.

2.2.3.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

2.2.3.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, General Conditions, and other items and the Fee that comprise the Guaranteed Maximum Price.

2.2.3.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.2.3.6 A date by which the Owner must accept the Guaranteed Maximum Price

2.2.4 The Construction Manager shall meet with the Owner and Consultant to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Consultant discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

2.2.5 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

2.2.6 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price 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.

2.2.7 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.8 The Owner shall authorize and cause the Consultant to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Consultant and Construction Manager. The Construction Manager shall promptly notify the Consultant and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

2.2.9 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established. The Owner may request that the Construction Manager assist with reviewing subcontractor invoices to verify that purchases are for the Ruby Grant Park.

2.3 CONSTRUCTION PHASE – PHASE TWO SERVICES

2.3.1 GENERAL: The Construction Phase shall commence on the Owner's acceptance of the Guaranteed Maximum Price proposal and the issuance of a Notice to Proceed or Work Order.

2.3.2 ADMINISTRATION

2.3.2.1 The Construction Manager shall solicit bids for all portions of the Work including portions that the Construction Manager customarily performs with the Construction Manager's own personnel. The Construction Manager shall solicit bids from subcontractors and from suppliers of materials or equipment fabricated especially for the Work in accordance with the mandatory provisions of the Act. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8.

2.3.2.4 After all the subcontracts are awarded, the owner and the Construction Manager may agree to convert the Guaranteed Maximum Price to a Lump Sum Price.

2.3.2.5 The Construction Manager shall schedule and conduct meetings at which the Owner, Consultant, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.3.2.6 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with the City of Norman General Provisions Document, including the Owner's occupancy requirements.

2.3.2.7 The Construction Manager shall provide monthly written reports to the Owner and Consultant on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Consultant.

2.3.2.8 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 and report the variances to the Owner and Consultant at regular intervals.

2.4 PROFESSIONAL SERVICES: Section 4, "Administration of the Contract", of the City of Norman General Provisions Document shall apply to both the Preconstruction and Construction Phases.

2.5 HAZARDOUS MATERIALS: Section 10 of the City of Norman General Provisions Document shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 Reserved.

3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Consultant, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS: In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site.

3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data

pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE: The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in the City of Norman General Provisions Document, the Consultant does not have such authority.

3.3 CONSULTANT: The Owner shall retain a Consultant to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, requested by the Construction Manager which must necessarily be provided by the Consultant for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Consultant and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Consultant, from which compensation provisions may be deleted.

3.4 LEGAL REQUIREMENTS: The Owner shall determine and advise the Consultant and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

4.1 COMPENSATION: For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

4.1.1 Pre-Construction Services: *(insert method and amount, use multiple entries if necessary):*

Lump sum \$17,575.00 for three months of Pre-Con. For each additional month, add \$3,125.00/month.

4.2 PAYMENTS: Payments shall be made monthly following presentation of the Construction Manager's invoice and shall be in proportion to services performed.

Payments are due and payable thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest in accordance with Section 41.4b of Title 62 of the Oklahoma Statutes.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION: For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

5.1.1 Construction Services: *(insert method and amount, use multiple entries if necessary):*

2.75% of the total Guaranteed Maximum Price

5.1.2 General Conditions (Reimbursable Costs): Refer to Attachment. *(insert method and amount, use multiple entries if necessary):*

The Owner and Construction Manager have agreed to a "General Conditions" cost that shall be included in the Guaranteed Maximum Price as part of the Cost of the Work, and shall include all costs of Construction Manager's supervisory and administrative personnel including all associated costs of insurance, taxes, benefits, vehicle allowances, cell phones, radios, telecommunications, computers, software, other miscellaneous office costs, office trailer rental, office utilities, and any other costs required to maintain a construction office on-site for a monthly lump sum amount of **\$41,620.00** for the **To be Determined in GMP Amendment** month duration of the Project through Final Completion. The monthly lump sum amount may be prorated for part of a calendar month at the commencement of construction and applied accordingly should the Project Schedule be impacted beyond the Construction Manager's control.

5.2 GUARANTEED MAXIMUM PRICE: The sum of the Cost of the Work, General Conditions, and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in

the Work is referred to in the Contract Documents as the Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.3 CHANGES IN THE WORK

5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in the City of Norman General Provisions Document.

5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in the City of Norman General Provisions Document and the terms "costs" and "a reasonable allowance for overhead and profit" as used in the City of Norman General Provisions Document shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the City of Norman General Provisions Document shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

5.3.5 Prior to the beginning of the Construction Phase, all parties will agree to the percent markup for Overhead and Profit, to be implemented in the event there are changes to the work

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

6.1.2 LABOR COSTS

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

6.1.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel are included in the General Conditions and shall not be charged separately as part of labor costs.

6.1.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, 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 are included in the General Conditions and shall not be charged separately as part of labor costs.

6.1.2.4 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, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

6.1.3 SUBCONTRACT AND SELF-PERFORM COSTS: Payments are due or made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts awarded pursuant to the Act and payments due to the Construction Manager for any self-performed portions of the Work.

6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

6.1.4.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

6.1.4.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

6.1.5.1 Costs, including 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.

6.1.5.2 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. Rates and quantities of equipment rented shall be one hundred percent (100%) of current edition of the "AED Green Book" standard rates for company owned equipment and actual charges for rented equipment from outside sources.

6.1.5.3 Costs of removal of debris from the site and its proper and legal disposal.

6.1.5.4 Reproduction costs within the Construction Manager's office on site, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office are included in the monthly General Conditions costs and shall not be charged separately as part of temporary facilities costs.

6.1.5.5 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.

6.1.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

6.1.6 MISCELLANEOUS COSTS

6.1.6.1 That portion directly attributable to this Contract of premiums for insurance and bonds at fixed rates agreed to by the Owner. Self-insurance for either the full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

6.1.6.2 Sales, use or similar taxes imposed by a governmental authority which are related to any portion of the Work that is not subject to the Owner's tax status and for which the Construction Manager is liable.

6.1.6.3 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.

6.1.6.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

6.1.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of the City of Norman General Provisions Document or other provisions of the Contract Documents.

6.1.6.6 Data processing costs related to the Work.

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

6.1.6.8 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.

6.1.7 OTHER COSTS: Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK: The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager:

6.1.8.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in the City of Norman General Provisions Document.

6.1.8.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of the City of Norman General Provisions Document.

6.1.10 Other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

6.2 COSTS NOT TO BE REIMBURSED: The Cost of the Work shall not include:

6.2.1 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, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

6.2.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

6.2.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

6.2.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

6.2.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

6.2.6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

6.2.7 Except as provided in Section 6.1.7, any cost not specifically and expressly described in Section 6.1.

6.2.8 Costs which would cause the Guaranteed Maximum Price to be exceeded, unless mutually agreed upon based on change in scope

6.3 DISCOUNTS, REBATES AND REFUNDS

6.3.1 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.

6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS AND AUDITS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; 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, and 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.

6.4.2 As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the Owner and subject to execution of a mutually acceptable non-disclosure agreement by the Construction Manager, the Owner and the Owner's auditors, the Construction Manager agrees any pertinent City, State, or Federal agency will have the right to examine and audit all records relevant to execution of the resultant contract. If an audit, litigation, or other action involving such records, are started before the end of the three year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later. The Owner agrees that (i) lump sum amounts for General Conditions, lump sum amounts for self-perform work, Construction Manager's Lump Sum Price (if the Guaranteed Maximum Price is converted to a Lump Sum Price), subcontractor lump subcontract amounts, rates, multipliers and other fixed percentages and amounts it has agreed that the Construction Manager may charge as a Cost of the Work are subject to the Owner's audit rights only for the Owner to confirm that such lump sum amounts, rates, multipliers, percentages or amounts have been charged by the Construction Manager in accordance with the Contract Documents, and (ii) the composition of such rates, multipliers, percentages or amounts is not subject to audit by the Owner or the Owner's auditors.

ARTICLE 7 CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

7.1.1 Based upon Applications for Payment submitted to the Consultant and Owner by the Construction Manager and Certificates for Payment issued by the Consultant, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as a mutually agreed upon by all parties.

7.1.3 Provided an Application for Payment is received by the Consultant not later than the first (1st) day of a month, the Owner shall make payment to the Construction Manager not later than as required by state statutes. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at a rate equal to the Wall Street Journal Prime Rate plus two percent (2%), not to exceed ten percent (10%) per annum.

7.1.4 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Consultant or Owner may require. This schedule, unless objected to by the Consultant or the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

7.1.5 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

7.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

7.1.6.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in the City of Norman General Provisions Document even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

7.1.6.2 Add that portion of the Lump Sum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

7.1.6.3 Add the Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

7.1.6.4 Subtract the aggregate of previous payments made by the Owner.

7.1.6.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

7.1.6.6 Subtract amounts, if any, for which the Consultant has withheld or nullified a Certificate for Payment as provided in the City of Norman General Provisions Document.

7.1.7 Payments to Subcontractors shall be subject to retention in accordance with the City of Norman General Provisions Document, General Conditions of the Construction Contract. The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

7.1.8 In taking action on the Construction Manager's Applications for Payment, the Consultant shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Consultant has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Consultant has made exhaustive or continuous on-site inspections or that the Consultant has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

7.2 FINAL PAYMENT

7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in the City of Norman General Provisions Document, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner; and (3) a final Certificate for Payment has then been issued by the Consultant and approved by the Owner; such final payment shall be made by the Owner not more than 30 days after the issuance of the Consultant's final Certificate for Payment and the Owner's approval.

7.2.2 The amount of the final payment shall be calculated as follows:

7.2.2.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

7.2.2.2 Subtract amounts, if any, for which the Consultant withholds, in whole or in part, a final Certificate for Payment as provided in the City of Norman General Provisions Document or other provisions of the Contract Documents.

7.2.2.3 Subtract the aggregate of previous payments made by the Owner.

7.2.3 The Owner will review the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Consultant by the Construction Manager. Based upon such Cost of the Work as the Owner determines to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Consultant will, within seven days after the Owner's approval of the final Cost of the Work, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Consultant's reasons for withholding a certificate as provided in Section 9.5.1 of the City of Norman General Provisions Document. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of the City of Norman General Provisions Document.

7.2.4 If the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Consultant. All claims of any disputed amount shall be submitted in accordance with Section 4.4 of the City of Norman General Provisions Document, and shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Consultant's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Consultant's final Certificate for Payment.

7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall

reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

ARTICLE 8 INSURANCE AND BONDS

8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER: During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11 of the City of Norman General Provisions Document. Such insurance shall be written for not less than the following limits, or greater if required by law:

8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws.

8.1.2 Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

Each Occurrence: \$300,000.00

General Aggregate: \$1,000,000 minimum

8.1.2.1 The policy shall be endorsed to have the General Aggregate apply to this Project only.

8.1.2.2 Builder's Risk Insurance

8.1.3 Automobile Liability (owned, non-owned and hired vehicles), \$50,000/\$100,000, for bodily injury and property damage.

8.2 BONDS

8.2.1 The Construction Manager shall furnish performance, statutory and maintenance bonds covering faithful performance of the Contract, payment of obligations arising thereunder and defective materials or workmanship. Bonds shall be included in the Cost of the Work. The amount of each bond shall be equal to One Hundred percent (100%) of the Contract Sum.

8.2.2 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 9 MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION: During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in the City of Norman General Provisions Document.

9.2 OTHER PROVISIONS

9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the City of Norman General Provisions Document, *General Conditions of the Contract for Construction*.

9.2.2 EXTENT OF CONTRACT: This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.2.3 OWNERSHIP AND USE OF DOCUMENTS: Article 1.3 of the City of Norman General Provisions Document shall apply to both the Preconstruction and Construction Phases.

9.2.4 GOVERNING LAW: The Contract shall be governed by the laws of the State of Oklahoma.

9.2.4.1 The Construction Manager certifies that it and all proposed subcontractors, whether known or unknown at the time this contract is executed or awarded, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employee Verification Program (E-Verify) available at www.dhs.gov/E-Verify.

9.2.5 ASSIGNMENT: The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.1 of the City of Norman General Provisions Document, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of the City of Norman General Provisions Document.

10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

10.1.3.1 Take the Cost of the Work incurred by the Construction Manager.

10.1.3.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

10.1.3.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. ___ shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE: Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in the City of Norman General Provisions Document, attached.

10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of the City of Norman General Provisions Document shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of the City of Norman General Provisions Document shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

10.3 SUSPENSION: The Work may be suspended by the Owner as provided in Article 14 of the City of Norman General Provisions Document; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of the City of Norman General Provisions Document except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

11.1 Other Documents, if any, forming part of the Contract Documents, are as follows:

Notice to Proceed/Work Order
City of Norman General Provisions
Contract Documents for Ruby Grant by Howell & Vancuren

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT in multiple copies on the respective dates herein below reflected to be effective on the date executed by the CITY.

DATED this 9th of April, 2019.

THE CITY OF NORMAN

("Owner")

By:

Lynne Miller, Mayor

ATTEST:

By:

Brenda Hall, City Clerk

Approved as to form and legality this ____ of _____, 2019.

City Attorney

Crossland Construction Company, Inc.

("Contractor")

By:



Name:

Ryan Rebsamen

Title:

Vice President

ATTEST:

By:



Title:

Project Manager

Non-Collusion Affidavit

The statement below must be signed and notarized before this contract will become effective

STATE OF Oklahoma)
) ss
COUNTY OF Cleveland)

Project Name: **City of Norman Ruby Grant Park**

Project #: _____

Ryan Rebsamen, of lawful age, being first duly sworn, on oath states, (S)he is the duly authorized agent of Crossland Construction Co, Inc., the Company under the contract which is attached to this statement, for the purpose of certifying the facts pertaining to the giving of things of value to government personnel in order to procure said Contract;

(S)he is fully aware of the facts and circumstances surrounding the making of the Contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the procurement of said Contract; and

Neither the Company nor anyone subject to the Company's direction or control has paid, given or donated or agreed to pay, give or donate to any office or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring the Contract to which this statement is attached.

Crossland Construction Co, Inc.,
(Company Printed Name)

[Signature]
(Authorized Representative Signature)

Subscribed and sworn to before me this 27 day of March, 2019

Ryan Rebsamen
(Authorized Representative Printed Name)

Vice President
(Authorized Representative Printed Title)

[Signature]
(Signature of notarial officer)

My Commission Expires: 09/08/21

My Commission #: 17008441



CITY OF NORMAN GENERAL PROVISIONS

SECTION I – GENERAL PROVISIONS

A. Definitions. When used herein, the terms below shall have the following definitions:

1. "The Consultant" shall mean the person lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term "Consultant" means the Consultant or the Consultant's authorized representative.
2. "The Contract Documents" shall mean the Bid Notice published in the Norman Transcript, the Notice to Bidders, Instructions to Bidders, Addenda issued prior to execution of the Contract, the Contractor's Bid or Proposal, the Construction Drawings, Specifications, Provisions, and Bonds thereto, this agreement between the Owner and the Contractor (hereinafter called "the Contract"), other documents listed in the Contract, and any Change Orders or Contract Amendments issued after execution of the Contract.
3. "The Contract Time" is the period of time, including authorized adjustments by Change Order, allotted in the Contract Documents for Substantial Completion of Work.
4. "Critical Path" shall mean the sequential construction tasks (each of a particular duration) that results in the least amount of time required to complete a project.
5. "The Date of Commencement" shall mean the date established in the Notice to Proceed. The date shall not be postponed by the failure of the acts of the Contractor or of persons or entities for whom the Contractor is responsible.
6. "The Date of Substantial Completion" shall mean the date certified by the Consultant and approved by the Owner in accordance with Section IX(G).
7. "The Drawings" shall mean the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, and includes plans, elevations, sections, details, schedules, diagrams and drawing notes.
8. "The Project" shall mean the total construction of which the Work performed under the Contract Drawings and may be the whole or a part and include construction by the Owner or by separate contractors.
9. "The Specifications" shall mean those documents located in the Project Manual and are that portion of the Contract Documents consisting of the written requirements for

materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services. Where there is a discrepancy between the Drawings and the Specifications, the Specifications will take precedence. Such discrepancies shall be brought to the attention of the Consultant before execution of any work related to the discrepancies.

10. "A Subcontractor" is a person or entity who has a direct contract with the Contractor to perform a portion of the Work on the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.
11. "Substantial Completion" shall mean the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.
12. "The Work" shall mean the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

B. Execution, Correlation and Intent.

1. The Contract Documents shall be executed by authorized representatives of the Owner and the Contractor.
2. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
3. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents are reasonably inferable from them as being necessary to produce the intended results.
4. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

5. Unless otherwise stated in the Contract Documents, words which have well known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

C. Ownership and Use of Drawings, Specifications and Other Documents.

1. The Drawings, Specifications and other documents prepared by the Consultant are the property of the Owner. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Consultant. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Consultant, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and for use in the execution of their Work under the Contract Documents.
2. The Contractor shall provide all copies of the Drawings and Project Manuals required to complete the Work. The Owner will provide an electronic copy of the documents to the reproduction company for printing purposes.

SECTION II – THE OWNER

- A. **Owner's Right to Alter Specifications.** The Owner may make such changes in the character of the work as may be necessary or desirable to insure completion of the work in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the Contract.
- B. **Owner's Right to Stop the Work.** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section XII(B) or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section VI(A).

- C. **Owner's Right to Carry Out the Work.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Consultant's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such payments, the Contractor shall pay the difference to the Owner.
- D. **Owner's Right to Reject Work.** The Owner shall have the authority to reject Work which does not conform to the Contract Documents.
- E. **Owner's Right to Approve Payment Applications.** The Owner shall have the right to review, evaluate and approve or reject Applications for Payment and Certificates for Payment.

SECTION III – THE CONTRACTOR

- A. **Review of Contract Documents and Field Conditions.**
 - 1. The Contractor shall carefully study and compare the Contract Documents with each other and shall at once report to the Consultant or Owner any errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Consultant for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Consultant or Owner. The Contractor shall do all work as provided in the Contract Documents and shall do such additional extra and incidental work as may be considered necessary to complete the work in a satisfactory and acceptable manner. The Contractor shall furnish all labor, materials, tools, equipment and incidentals necessary to the prosecution of the work, unless otherwise specified. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Consultant, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.
 - 2. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities.

Errors, inconsistencies or omissions discovered shall be reported to the Consultant before proceeding with the work.

B. Supervision and Construction Procedures.

1. The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.
2. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.
3. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Consultant in the Consultant's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.
4. The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

C. Labor and Materials.

1. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
2. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

- D. Warranty.** The Contractor warrants to the Owner and Consultant that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If

required by the Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

E. Taxes. The Contractor shall pay all applicable sales, consumer, use and similar taxes for the Work or any portions thereof.

F. Permits, Fees and Notices.

1. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for permits, fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when Bids are received. Building permits from local municipalities are required for Work.
2. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.
3. If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes or other applicable rules and regulations, the Contractor shall promptly notify the Consultant and Owner in writing, and necessary changes shall be accomplished by appropriate Change Order.
4. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Consultant and Owner, the Contractor shall assume full responsibility for such Work and shall bear any costs attributable to such work.

G. Allowances.

1. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.
2. Unless otherwise provided in the Contract Documents:
 - a. Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work.
 - b. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts.
 - c. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.
 - d. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order.

- H. Superintendent and Other Workers. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Contractor shall submit the name and experience qualifications of the proposed superintendents to the Owner for approval. The Consultant may demand the dismissal of any person or persons employed by the Contractor, in, about, or on the work, who shall misconduct himself or be incompetent or negligent in the proper performance of his or her duties or neglect or refuse to comply with the directions of the Consultant, and such persons shall not be employed again thereon without the written consent of the Consultant. Should the Contractor continue to employ or again employ such person or persons without the written consent of the Consultant, then the Consultant may withhold all progress payments which are, or may become due, or may suspend the work until compliance of such orders. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.
- I. Work Day: Work shall be done only during regular and commonly accepted and prescribed working hours Monday through Friday. No Work shall be done nights, Saturdays, Sundays, or legal holidays, as recognized by the City of Norman, unless the Contractor submits a written request to the Owner which requests working outside of regular working hours, or on Saturdays, Sundays, or legal holidays. The Owner will respond to each of these requests, individually. Eight (8) hours shall constitute a day's work and the Contractor shall observe all State laws and City ordinances governing hours of work.
- J. Contractor's Construction Schedules.
1. Prior to the Notice to Proceed being issued, the Contractor shall prepare and submit for the Owner's and Consultant's information a "90 Day Construction Schedule" which shall be used to monitor the progress of the Work during the first ninety (90) calendar days of the Contract. During this ninety day period, the Contractor shall prepare and submit the "Critical Path Construction Schedule" for the entire project, including the "90 Day Project Schedule", which shall be used to monitor the remainder of the Work. The overall duration of the "Construction Schedule" shall coincide with and shall not exceed the time limits specified in the Contract Documents. During construction, if the progress of the Work does not meet the "Construction Schedule" the Contractor shall revise and resubmit the schedule for the delayed activities within 21 days of any delayed activity. Resubmitted schedules shall indicate the revised times for each activity and shall not exceed the time limits specified in the Contract Documents and any approved Change Orders. Failure to resubmit the delayed activity or maintain a current "Construction Schedule" shall be considered a breach of the Contract.
 2. The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Consultant.

3. Failure of the Contractor to construct the Work in accordance with the "90 Day Construction Schedule" or the "Construction Schedule" shall be considered a substantial breach of the Contract Documents and the Owner may terminate the Contract in accordance with Section 14.2. All "Float" time in the "Construction Schedule" shall be available to the Owner for the Owner's use.
4. The Contractor shall prepare and keep current, for the Consultant's approval, a schedule of submittals which is coordinated with the Contractor's "Construction Schedule" and allows the Consultant reasonable time to review submittals.

K. Documents and Samples at the Site.

1. The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Contract Documents, in good order and marked currently to record changes and selections made during construction and, in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Consultant and shall be delivered to the Consultant for submittal to the Owner upon completion of the Work.
2. Additionally, the Contractor shall maintain at the site the Drawings that have been stamped and approved by the Norman Fire Marshal. This approved set of Drawings is only for the use of the Norman Fire Marshal's office.

L. Shop Drawings, Product Data and Samples.

1. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
2. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
3. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
4. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Consultant is subject to the limitations of Section IV(A)(7).
5. The Contractor shall review, approve and submit to the Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or

in the activities of the Owner or of separate Contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

6. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Consultant. Such Work shall be in accordance with approved submittals.
 7. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
 8. The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Consultant's approval of Shop Drawings, Product Samples or similar submittals unless the Contractor has specifically informed the Consultant in writing of such deviation at the time of submittal and the Consultant has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Consultant's approval thereof.
 9. The Contractor shall direct specific attention, in writing, or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Consultant on previous submittals.
 10. Informational submittals upon which the Consultant is not expected to take responsive action may be so identified in the Contract Documents.
 11. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Consultant shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- M. Use of Site. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents.
- N. Cutting and Patching
1. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
 2. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor

shall not cut or otherwise alter such construction by the Owner or a separate Contractor except with written consent of the Owner and of such separate Contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate Contractor the Contractor's consent to cutting or otherwise altering the Work.

O. Cleaning Up.

1. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project site, all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.
2. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

P. Access to Work. The Contractor shall provide the Owner and Consultant access to the Work in preparation and progress wherever located.

Q. Royalties and Patents. The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Consultant harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Consultant.

R. Indemnification.

1. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Consultant, Consultant's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than the Work itself including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.
2. In claims against any person or entity indemnified by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose

acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under Oklahoma's workers' compensation laws.

SECTION IV – CONTRACT ADMINISTRATION

A. Consultant's Administration of the Contract.

1. The Consultant will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Section XII(B). The Consultant will advise and consult with the Owner. The Consultant will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.
2. The Consultant and sub-consultants will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Consultant will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of onsite observations as an Architect or Engineer, the Consultant will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.
3. The Consultant will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Section III(B). The Consultant will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Consultant will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
4. Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Consultant and copy the Program Manager. Communications by and with the Consultant's consultants shall be through the Consultant. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.
5. Based on the Consultant's observations and evaluations of the Contractor's Applications for Payment, the Consultant will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

6. The Consultant will have authority to reject Work that does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable for implementation of the intent of the Contract Documents, the Consultant will have authority to require additional inspection or testing of the Work in accordance with Section XIII(H) whether or not such Work is fabricated, installed or completed. However, neither this authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consultant to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.
7. The Consultant will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate Contractors, while allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities (which shall be measured according to the United States Standards Measurement at the point of delivery) or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Consultant's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections III(B, D and K). The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
8. When modifications to the Contract or Contract Documents are being requested, the Contractor shall prepare and submit a Change Order to the Consultant. The Work described in the approved Change Order may be started by the Contractor upon receipt of the approved "Change Order".
9. The Consultant will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
10. If the Owner and Consultant agree, the Consultant will provide one or more project representatives to assist in carrying out the Consultant's responsibilities at the site.

The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

11. The Consultant will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Consultant's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Consultant shall be furnished in compliance with this Section IV(A), then delay shall not be recognized on account of failure by the Consultant to furnish such interpretations until 15 days after written request is made for them.
12. Interpretations and decisions of the Consultant will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

B. Claims and Disputes.

1. **Definition.** A Claim is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by submitting a Change Order.
2. **Decision of Consultant.** Claims, including those alleging an error or omission by the Consultant, shall be referred initially to the Consultant for action as provided in Section IV(C). A decision by the Consultant, as provided in Section IV(C)(4) shall be required as a condition precedent to consideration by the Owner.
3. **Time Limits on Claims.** Claims must be made within 24 hours after occurrence of the event giving rise to such Claim or within 24 hours after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.
4. **Continuing Contract Performance.** Pending final resolution of a Claim, including protest, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make monthly progress payments in accordance with the Contract Documents.
5. **Waiver of Claims: Final Payment.** The making of final payment shall constitute a waiver of Claims except those arising from:
 - a. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

- b. failure of the Work to comply with the requirements of the Contract Documents; or
 - c. terms of special warranties required by the Contract Documents.
- 6. Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by the Contractor shall be given to the Consultant and Owner promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The failure by the Contractor to give such written notice of the discovered concealed or unknown condition prior to executing any additional Work shall constitute a waiver of any claim for additional compensation or time extension. Upon receipt of a written notice, the Consultant will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. Any change in the Contract Sum or Contract Time shall only be made by the execution of a Change Order. If the Consultant determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Consultant shall so notify the Owner and Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within 21 days after the Consultant has given notice of the decision.
- 7. Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section (X)(B). If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Consultant, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Consultant, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein. Any change in the Contract Sum shall only be made by the execution of a Change Order.
- 8. Claims for Additional Time.
 - a. If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include a description of the probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. Any change in the Contract Time shall only be made by the execution of a Change Order.
 - b. Consultant and Authority must be notified of all potential claims for additional days that exceed the work days as indicated in the Authority of

Norman Office of the Purchasing Division, Invitation to Bid, and the Contract Documents thereof, within (24) hours of the occurrence of the claim, in writing, with documentation from the National Oceanic & Atmospheric Administration (NOAA) Norman/Max Westheimer site at <http://w1.weather.gov/data/obhistory/KOUN.html>. Other sources must be submitted to the Consultant and Owner, the Authority of Norman, for approval prior to use.

- c. All claims for additional time due to adverse weather conditions, e.g. the requirement of rainfall at the construction site in excess of 0.5 inches, within (8) hours of the next working day, or a minimum of 0.5 inches of rain at the beginning of work occurring on the Critical Path Schedule planned for that day, or during the work day, with evidence substantiating the resultant loss of working time on the Critical Path Schedule, shall be submitted as stated previously, and reviewed and approved or rejected by the Consultant with the monthly payment application.
 - d. Claims for weather conditions and lost work days shall be recorded daily by the Contractor as required by Section IV(B)(8)(b) and submitted to the Consultant with the monthly payment applications, along with an updated construction schedule. A Change Order shall be executed and signed by all parties for all valid claims in order to add time to the original Contract Time as indicated in the Contract Documents.
 - e. Weather conditions and lost work days shall be recorded daily by the Contractor and submitted to the Consultant with the monthly payment applications.
9. Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Section IV(B)(7) or (8).

A. Resolution of Claims and Disputes.

- 1. The Consultant will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) reject the Claim in whole or in part, stating reasons for rejection, (3) recommend approval of the Claim by the Owner or (4) suggest a compromise. The Consultant may also, but is not obligated to notify the surety, if any, of the nature and amount of the Claim.
- 2. If a Claim has been resolved, the Consultant will prepare or obtain appropriate documentation.

3. If a Claim has not been resolved, the Contractor shall, within ten days after the Consultant's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Consultant, (2) modify the initial Claim or (3) notify the Consultant that the initial Claim stands.
4. If a Claim has not been resolved after consideration of the foregoing and of further evidence presented to the Owner by the Consultant or Contractor, the Owner will notify the Consultant and Contractor in writing that the Owner's decision will be made within seven days. Upon expiration of such time period, the Owner will render to the parties the Owner's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Owner may, but is not obligated to, notify, the surety and request the surety's assistance in resolving the controversy.
5. The Contractor may appeal the Owner's decision by submitting written notice of a protest to the Consultant within ten (10) days of receiving the Owner's decision as described in Section IV(C)(4) above.
6. **Time Limits on Claims:** The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than five (5) years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this section.

SECTION V – SUBCONTRACTORS

A. Award of Subcontracts and Other Contracts for Portions of the Work.

1. The Contractor, within seven (7) days of issuance of the Notice to Proceed, shall furnish in writing to the Owner, through the Consultant, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Consultant will promptly reply to the Contractor in writing stating whether or not the Owner or the Consultant, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Consultant to reply promptly shall constitute notice of no reasonable objection.
2. The Contractor shall not contract with a proposed person or entity to whom the Owner or Consultant has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
3. If the Owner or Consultant has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Consultant has no reasonable objection. The Contract Sum shall be increased or

decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

4. The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Consultant makes reasonable objection to such change.
- B. Sub-Contractual Relations. By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Consultant. Each subcontract agreement shall preserve and protect the rights of the Owner and Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.
- C. Nothing herein should be construed to relieve the Contractor from its responsibility for the Work. The Contractor, shall at all times, when work is in operation, be represented either in person or by a qualified superintendent or other designated representative.

SECTION VI – CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

- A. Owner's Right to Perform Construction and to Award Separate Contracts.
1. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

2. The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

B. Mutual Responsibility.

1. The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
2. If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Consultant apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.
3. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.
4. The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section X(A)(7).

- C. Owners' Right to Clean Up. If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section III(N), the Owner may clean up and allocate the cost among those responsible as the Consultant determines to be just.

SECTION VII – CHANGES IN THE WORK

A. Changes.

1. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or order for a minor change in the Work, subject to the limitations stated in this Section VII and elsewhere in the Contract Documents.

2. A Change Order shall be based upon agreement among the Owner, Contractor and Consultant and an order for a minor change in the Work may be issued by the Consultant alone.
3. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order.

B. Change Orders.

1. A Change Order, Form G701, is a written instrument prepared by the Consultant and signed by the Owner, Contractor and Consultant, stating their agreement upon all of the following:
 - a. a change in the Work;
 - b. the amount of the adjustment in the Contract Sum, if any; and
 - c. the extent of the adjustment in the Contract Time, if any.
2. The cost or credit to the Owner resulting from a change in the work shall be determined by the Contractor completing a Change Order which requires a listing of:
 - a. All materials with the cost per item;
 - b. all labor with the number and cost of hours; and
 - c. all equipment used with an hourly cost.
3. The Contractor must include a breakdown of costs for each Subcontractor similar to the requirements in Section VII(B)(2).

C. Minor Changes in the Work. The Consultant will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

SECTION VIII – TIME

A. Progress and Completion.

1. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
2. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the date of commencement as established by the Notice to Proceed issued by the Owner.
3. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

B. **Work Day:** Work shall be done only during regular and commonly accepted and prescribed working hours Monday through Friday. No Work shall be done nights, Saturdays, Sundays, or legal holidays, as recognized by the City of Norman, unless the Contractor submits a written request to the Owner which requests working outside of regular working hours, or on Saturdays, Sundays, or legal holidays. The Owner will respond to each of these requests, individually. Eight (8) hours shall constitute a day's work and the Contractor shall observe all State laws and City ordinances governing hours of work.

C. **Delays and Extensions of Time.**

1. If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Consultant, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending hearing results, or by other causes which the Consultant determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Consultant and Owner may determine.
2. Claims relating to time shall be made in accordance with applicable provisions of Section IV(B).
3. An extension of the Contract Time is the sole and exclusive remedy available to the Contractor, in the event of delays described in Section 8(B). In no event, and under no circumstances, shall the Contract Sum be increased, nor shall the Contractor claim, recover or receive payment for any delay to the Project, whether or not such delayed event is in the critical path of the construction schedule. Unless a substantial change in scope occurs and then a mutually agreeable change in cost would occur.

D. **Failure to Complete Work on Time.**

1. Time is of the essence. The Parties stipulate that the damage for failure to complete the project within the designated Substantial Completion date is \$500 per day, including \$500 per day for each day exceeding 30 past the Substantial Completion date.
2. **Waiver of Claims for Consequential Damages**
The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes
 - .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 - .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and

reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the termination provisions of this Agreement. Nothing contained in this section shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

SECTION IX – PAYMENTS AND COMPLETION

- A. **Contract Sum.** The Contract Sum is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum shall only be changed by a Change Order.
- B. **Schedule of Values.** Before the first Application for Payment is submitted, the Contractor shall submit to the Consultant and Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Consultant and Owner may require. Each value indicated on the Schedule of Values shall be the exact amount of each subcontract or portion of the Work it represents. This schedule, unless objected to by the Consultant or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.
- C. **Applications for Payment.**
 - 1. At least ten days before the date established for each progress payment, the Contractor shall submit to the Consultant an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Consultant may require, such as copies of requisitions from Subcontractors and material suppliers.
 - 2. The period covered by each Application for Payment shall be one calendar month ending the last day of the month.
 - 3. Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
 - 4. Five percent (5%) of all partial payments made shall be withheld as retainage.
 - 5. All payment applications must be accompanied by the affidavits provided with the Contract Documents.
 - 6. Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

7. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location properly bonded or insured as a warehouse for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. All stored materials shall be protected from weather conditions by properly secured methods. The Owner shall not pay for stored materials that are not properly protected.
8. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

D. Certificates for Payment.

1. The Consultant will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Consultant determines is properly due, or notify the Contractor and Owner in writing of the Consultant's reasons for withholding certification in whole or in part as provided in Section IX(E)(1). The Owner shall have the right to review and approve the Certificates for Payment.
2. The issuance of a Certificate for Payment will constitute a representation by the Consultant to the Owner, based on the Consultant's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The amount indicated in the Certificate of Payment shall be computed as follows:
 - a. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedules of values, less retainage of five percent (5%).
 - b. Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably

stored off the site at a location agreed upon in writing), less retainage of five percent (5%).

- c. Subtract the aggregate of previous payments made by the Owner; and
- d. Subtract amounts, if any, for which the Consultant has withheld or nullified a Certificate for Payment as provided for herein.

E. Decisions to Withhold Certification.

1. The Consultant or Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Consultant's opinion the representations to the Owner required by Section (IX)(D)(2) cannot be made. If the Consultant is unable to certify payment in the amount of the Application, the Consultant will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Consultant cannot agree on a revised amount, the Consultant will promptly issue a Certificate for Payment for the amount for which the Consultant is able to make such representations to the Owner. The Consultant may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Consultant's opinion to protect the Owner from loss because of:
 - a. defective Work not remedied;
 - b. third party claims filed or reasonable evidence indicating probable filing of such claims;
 - c. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
 - d. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 - e. damage to the Owner or another Contractor;
 - f. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 - g. persistent failure to carry out the Work in accordance with the Contract Documents.
2. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

F. Progress Payments.

1. After the Consultant has issued a Certificate for Payment, the Owner shall review for approval and make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Consultant.
2. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is

entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to subcontractors in similar manner.

3. The Consultant will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Consultant and Owner on account of portions of the Work done by such Subcontractor.
4. Neither the Owner nor Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law
5. Payment to material suppliers shall be treated in a manner similar to that provided in Section IX(F)(2), (3) and (4).
6. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
7. Should the project extend beyond the Contract Time, progress payments shall continue including approved Change Orders. Progress payments made after the Contract Time will be reduced by any applicable disincentives provided herein.

G. Substantial Completion.

1. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Consultant a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include all items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Consultant will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Consultant's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Consultant. The Contractor shall then submit a request for another inspection by the Consultant to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the

Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

2. Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Consultant, the Owner shall make payment, reflecting adjustment for retainage for such Work or portion thereof as provided in the Contract Documents.

H. Partial Occupancy or Use.

1. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is authorized by the Owner. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, Retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Consultant as provided under Section IX(G)(1). Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Consultant.
2. Immediately prior to such partial occupancy or use, the Owner, Contractor and Consultant shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
3. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

I. Final Completion and Final Payment.

1. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Consultant will promptly make such inspection and, when the Consultant finds the Work acceptable under the Contract Documents and the Contract fully performed, the Consultant will promptly issue a final Certificate for Payment stating that to the best of the Consultant's knowledge, information and belief, and on the basis of the Consultant's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Consultant's

final Certificate for Payment will constitute a further representation that conditions listed in Section (IX)(I)(2) as precedent to the Contractor's being entitled to final payment have been fulfilled.

2. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Consultant an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied.
3. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Section IV(B)(5).
4. When the Contract Time has been exceeded, including approved Change Orders, and claims for additional compensation are submitted by Consultants for extended services that are made necessary solely by the delay of the Contractor, the Owner shall deduct the amount of the claims from the final payment to the Contractor.

SECTION X – PROTECTION OF PERSONS AND PROPERTY

A. Safety of Persons and Property.

1. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - a. employees on the Work and other persons who may be affected thereby.
 - b. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - c. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
2. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
3. The Contractor shall not enter upon private property for any purpose without first obtaining permission and he shall be responsible for the preservation of and shall use every precaution necessary to prevent damage to all trees, fences, culverts, bridges, pavements driveways, sidewalk, etc. to all water, sewer, gas or electric lines or appurtenance thereof and to all other public or private property along or adjacent to the work.

4. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
 5. Materials shall be stored so as to insure the preservation of their quality and fitness for the work. When directed by Consultant, they shall be placed on wooden platforms or other hard, clean surfaces and not on the ground, and shall be placed under cover when directed. Stored materials shall be located so as to facilitate prompt inspection.
 6. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
 7. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Section IX(A)(1) caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Section IX(A), except damage or loss attributable to acts or omissions of the Owner or Consultant or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section III(Q).
 8. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Consultant.
 9. The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- B. Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section IV(B) and Section VII.
- C. Hazardous Materials and Substances
1. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but

not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

2. Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.
3. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 1.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.
4. The Owner shall not be responsible under this Section 1 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.
5. The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 1.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

6. If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

SECTION XI – INSURANCE AND BONDS

A. Contractor's Liability Insurance

1. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Oklahoma such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
 - a. claims under worker compensation;
 - b. claims involving contractual liability insurance;
 - c. liability insurance required by 61 O.S. §113 in an amount not less than \$25,000 for any claim of loss of property arising out of a single act, \$125,000 for any claim of injuries, including accidental death; and \$1,000,000 for any number of claims arising out of a single accident; and
 - d. builder's risk insurance
2. The insurance required by Section XI(A)(1) shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final acceptance by the Owner.
3. Certificates of Insurance acceptable to the Owner shall be filed with the Owner with the executed Contract. These Certificates and the insurance policies required by this Section XI(A) shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

B. Performance Bond, Maintenance Bond and Statutory Bond.

1. The Contractor is required to have three bonds for Contracts with the Authority exceeding Fifty Thousand Dollars (\$50,000.00):
 - a. Performance Bond for 100% of the value of the Contract to insure completion of the Work.
 - b. Maintenance Bond for 100% of the value of the Contract to provide correction of defects in the construction and equipment for one year after acceptance of the Work; and

- c. Statutory Bond for 100% of the Contract to assure that the Owner is protected from the action of Subcontractors, suppliers and employees for unpaid debts of the Contractor.
2. All bonds shall be on the forms prescribed and issued by the Owner. All bond submittals shall contain all terms and conditions of the bonds or applicable to the bonds.
3. Irrevocable Letters of Credit may be used as a substitute for the bonds required in (B)(2) above. The Letters must be on the forms prescribed and provided by the Owner and issued by a financial institution insured by Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
4. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor or the Owner shall promptly furnish a copy of the bonds or of letters of credit or shall permit a copy to be made.

SECTION XII – UNCOVERING AND CORRECTION OF WORK

A. Uncovering of Work.

1. If a portion of the Work is covered contrary to the Consultant's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Consultant, be uncovered for the Consultant's observation and be replaced at the Contractor's expense without change in the Contract Time.
2. If a portion of the Work has been covered which the Consultant has not specifically requested to observe prior to it being covered, the Consultant may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

B. Correction of Work.

1. The Contractor shall promptly correct Work rejected by the Consultant or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Consultant's services and expenses made necessary thereby.

2. If, within one year after the date of Final Completion of the Work or after the date for commencement of warranties established under Section IX(G)(1), or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation under this Section XII(B)(2) shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
3. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
4. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section II(C). If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Consultant, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Consultant's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.
5. The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
6. Nothing contained in this Section XII(B) shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents.

SECTION XIII – MISCELLANEOUS PROVISIONS

- A. **Governing Law.** The Contract shall be governed by Oklahoma law.
- B. **Successors and Assigns.** The Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. The Contractor shall

not assign the Contract or any portion thereof without written consent of the Owner. If the Contractor attempts to make such an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

C. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

D. Rights and Remedies.

1. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
2. No action or failure to act by the Owner, Consultant or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
3. Contractor's Claim for Damages. Should the Contractor claim compensation for any alleged damage by reasons of the acts or omissions of the Owner, he shall within ten (10) days after the sustaining of such damage, make a written statement to the Consultant setting out in detail the nature of the alleged damage. On or before the 25th day of the month succeeding that in which any such damage is claimed to have been sustained, the Contractor shall file with the Consultant an itemized statement of the details and amount of such damage and upon request give the consultant access to all books of accounts, receipts, vouchers, bills of lading and other books or papers containing any evidence as to the amount of such damage. Unless such statement shall be filed as thus required, the Contractor's claim for compensation shall be waived and he shall not be entitled to payment on account of any such damage.

E. Tests and Inspections.

1. Tests, inspections and approvals of portions of the Work required by the Contract Documents shall be made at appropriate times as specified. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with the independent testing laboratory under separate contract with the Owner. The Contractor shall give the Consultant timely notice of when and where tests and inspections are to be made so the Consultant may observe such procedures. The Owner shall bear costs of tests, inspections or approvals.
2. If the Consultant or Owner determine that portions of the Work require additional testing, inspection or approval not included under Section XIII(H)(1), the Consultant will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity

acceptable to the Owner, and the Contractor shall give timely notice to the Consultant of when and where tests and inspections are to be made so the Consultant may observe such procedures. The Owner shall bear such costs except as provided in Section XIII(H)(3).

3. If such procedures for testing, inspection or approval under Section XIII(H)(1) and (2) reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Consultant's services and expenses.
 4. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Consultant.
 5. If the Consultant is to observe tests, inspections or approvals required by the Contract Documents, the Consultant will do so promptly and, where practicable, at the normal place of testing.
 6. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.
- F. Audits and Records: As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting this contract, the Contractor agrees any pertinent entity will have the right to examine and audit all records relevant to execution of the resultant contract. The contractor is required to retain all records relative to this contract for the duration of the contract term and for a period of three years following completion and/or termination of the contract. If an audit, litigation, or other action involving such records are started before the end of the three year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.
- G. The Contractor certifies that it and all proposed subcontractors, whether known or unknown at the time this contract is executed or awarded, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employee Verification Program (E- Verify) available at www.dhs.gov/e-verify.
- H. Americans with Disabilities Act of 1990 ("ADA") (42 U.S.C. 12101). As a public entity, the City may only contract with other entities which comply with the ADA. Contractors, by signing the bid documents and entering into a contract with the City of Norman, signify that they are aware of and comply with the requirements of the ADA. Failure to be in compliance with the ADA may require cancellation of a contract.

SECTION XIV – TERMINATION OR SUSPENSION OF THE CONTRACT

A. Termination by the Contractor.

1. The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:
 - a. issuance of an order of a court or other public authority having jurisdiction;
 - b. an act of government, such as a declaration of national emergency, making material unavailable; or
 - c. If repeated suspensions, delays or interruptions by the Owner as described in Section XIV(C) constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
2. If one of the above reasons exists, the Contractor may, upon seven additional days written notice to the Owner and Consultant, terminate the Contract and recover from the Owner payment for Work executed.
3. If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days written notice to the Owner and the Consultant, terminate the Contract and recover from the Owner as provided in Section XIV(A)(2).

B. Termination by the Owner for Cause.

1. The Owner may terminate the Contract if the Contractor:
 - a. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - b. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
 - c. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
 - d. repeatedly fails to comply with the terms and conditions of the Contract and Contract Documents;
 - e. or is otherwise guilty of substantial breach of a provision of the Contract Documents.
2. When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- a. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 - b. accept assignment of subcontracts; and
 - c. finish the Work by whatever reasonable method the Owner may deem expedient.
3. When the Owner terminates the Contract for one of the reasons stated in Section B(1) herein, the Contractor shall not be entitled to receive further payment until the Work is finished.
4. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Consultant's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Consultant, upon application, and this obligation for payment shall survive termination of the Contract.

C. Suspension by the Owner for Convenience

1. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
2. An adjustment shall be made for increases in the cost of performance of the Contract. No adjustment shall be made to the extent:
 - a. that performance is, was or would have been so suspended, delayed or interrupted by another cause which the Contractor is responsible; or
 - b. that an equitable adjustment is made or denied under another provision of this Contract.
3. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

GENERAL PROVISIONS

SECTION 201 - DEFINITIONS OF TERMS

201.01 – DEFINITIONS

Wherever the words, forms or phrases herein defined, or pronouns used in their stead, occur in these specifications, in the contract or in the advertisement or any document or instrument herein contemplated or to which these specifications apply, the intent and meaning shall be interpreted as follows:

Advertisement	All of the legal publications pertaining to the work contemplated or under contract.
A.N.S.I.	American National Standards Institute.
A.S.T.M.	The American Society for Testing Materials.
Award.....	The decisions of the City to accept the lowest responsible and most advantageous bid for the work, subject to the execution and approval of a satisfactory contract and the required bonds therefor, and to such other conditions as may be specified or otherwise required by law.
Authority	The Norman Municipal Authority
Bidder.....	Any person or persons, partnership, company, firm or corporation acting directly or through a duly authorized representative submitting a proposal for the work contemplated.
City.....	The City of Norman, Oklahoma, a Municipal Corporation, acting through its duly authorized assistants or agents.
City Attorney	The City Attorney of the City of Norman, Oklahoma, or their duly authorized assistants or agents.
City Clerk.....	The City Clerk of the City of Norman, Oklahoma, or their duly authorized assistants or agents.
City Manager	The Manager of the City of Norman, Oklahoma

City Controller	The City Controller of the City of Norman, Oklahoma or his duly authorized assistants or agents.
Contract.....	The written agreement covering the performance of the Work. The Contract includes the Advertisement and Notice to Bidders, Proposal, Bonds, Specifications, including special provisions, plans or working drawings and any supplemental agreement pertaining to the work or materials therefore.
Contractor	The person or persons, partnership, company, firm, or corporation entering into Contract for the execution of the work, acting directly or through a duly authorized representative.
Consultant	The City of Norman Development Coordinator, or their duly authorized agents, assistants, inspectors, or Superintendent.
Furnish	To supply.
Maintenance Bond	The approved form of security furnished by the Contractor and their Surety as a guarantee that they will maintain the work constructed by them in good condition for the period of time required.
Mayor	The Mayor of the City of Norman, Oklahoma.
Performance Bond	The approved form of security furnished by the Contractor and their surety as a guarantee of good faith on the part of the Contractor to execute the work in accordance with the plans and specifications and terms of the Contract.
Plan or Plans	All of the drawings pertaining to the Contract and made a part thereof, including such supplementary drawings as the Consultant may issue from time to time, in order to elucidate other drawings or for the purpose of showing changes in the work as authorized under the Section "Changes and Alterations," or for showing details not shown thereon.
Proposal.....	The written statement or statements duly filed with

the Purchasing Agent of the person or persons, partnership, company, firm, or corporation proposing to do the work contemplated.

Proposal Form.....The approved form on which the formal bids for the Work are to be prepared and submitted.

Proposal Guaranty.....The security, designated in the "Proposal Form" and in the "Advertisement," to be furnished by the Bidder as a guarantee of good faith to enter into contract with the City and to execute the required bonds for the work contemplated after the work is awarded to him.

ProvideTo furnish and erect or install.

Special Provisions.....The special clauses setting forth conditions or requirements peculiar to the specific project involved supplementing the Standard Specifications and taking precedent over any conditions or requirements of the Standard Specifications with which they are in conflict.

Specifications.....The directions, provisions, and requirements contained herein, together with the "Special Provisions" supplemental hereto, pertaining to the method and manner of performing the work or to the quantities or qualities of materials to be furnished under the Contract.

Statutory BondThe approved form of Surety set up and furnished by the Contractor and his Surety as a guarantee that he will pay, in full, all bills and accounts for materials and labor used in the construction of the work, as provided by law.

Surety or Sureties.....The corporate body which is bound by such bonds as are required with and for the Contractor, and engages to be responsible for the entire and satisfactory fulfillment of the Contract and for any and all requirements as set out in the specifications, Contract, or plans.

The WorkAll work, including the furnishing of labor,

materials, tools, equipment and incidentals, to be performed by the Contractor under the terms of the Contract.

Working Day.....Work shall be done only during regular and commonly accepted and prescribed working hours Monday through Friday. No Work shall be done nights, Saturdays, Sundays, or legal holidays, as recognized by the City of Norman, unless the Contractor submits a written request to the Owner which requests working outside of regular working hours, or on Saturdays, Sundays, or legal holidays. The Owner will respond to each of these requests, individually. Eight (8) hours shall constitute a day's work and the Contractor shall observe all State laws and City ordinances governing hours of work.

SECTION 202 – PROPOSAL REQUIREMENTS AND CONDITIONS

202.01 – CONTENTS OF PROPOSAL FORM

The Authority will furnish Bidders with proposal forms which will state the general locations and description of the contemplated work and which will contain a list of the items of work to be done or materials to be furnished and upon which bid prices are asked. The proposal form will state the time limits for commencing and for completing the work and will provide for entering the amount of the proposal guaranty. The proposal form will contain a Non-Collusion Affidavit.

202.02 – INTERPRETATION OF PLANS AND SPECIFICATIONS

If any person contemplating submitting a bid for the proposed Contract is in doubt as to the true meaning of any part of the plans, specifications or other proposed Contract documents, he may submit to the Consultant a written request for an interpretation thereof. The person submitting such request will be responsible for its prompt delivery. An interpretation of the proposed documents will be made only by Addendum issued and a copy of such Addendum will be mailed or delivered to each person receiving a set of such documents. The Authority will not be responsible for any other explanations or interpretations of the proposed document.

202.03 – EXAMINATION OF DOCUMENTS AND SITE OF WORK

Bidders are required, prior to submitting any proposal, to read carefully the Specifications, the Proposal, Contract and Bond forms; to examine carefully all plans on file with the City Controller and Consultant; to visit the site of work; to examine carefully local conditions; to inform themselves by their independent research of the difficulties to be encountered and judge for themselves of the accessibility of the work and all attending circumstances affecting the cost of doing the work in the time required for its completion and obtain any information required to make an intelligent proposal. Bidders shall rely exclusively upon their own estimates,

investigations and other data which are necessary for full and complete information upon which the proposal may be based. It is mutually agreed that submission of a proposal will evidenced that the Bidder has made the examinations and investigations required herein.

202.04 – PREPARATION OF PROPOSAL

The Bidder shall submit his proposal on the forms furnished by the Authority. All blank spaces in the proposal forms shall be correctly filled in and the Bidder shall state the prices, written in ink, both in words and numerals, for which he proposes to do the work contemplated or furnish the materials required.

Such prices shall be written distinctly legible. In case of conflict between words and numerals, the words will govern. If the proposal is submitted by an individual, his name must be signed by him or his duly authorized agent and his post office address given. If the proposal is submitted by a firm or partnership, the name and post office address of each member must be given and the proposal signed by a member of the firm or partnership as a person duly authorized. If the proposal is made by a company or corporation, the company or corporate name and the state under the laws of which said company or corporation is chartered and the business address must be given and the proposal signed by an official or agent duly authorized. Powers of Attorney, authorizing agents or other to sign proposals must be properly certified and must be in writing and on file with the City Clerk or submitted with the proposal.

202.05 – PROPOSAL AFFIDAVIT

Each proposal or copy thereof shall be accompanied by a sworn statement in writing that the person signing the proposal executed said proposal in behalf of the Bidder therein named and that he had lawful authority to do so and that the said Bidder has not directly or indirectly entered into any agreement, express or implied, with any other Bidder or Bidders having for its object the controlling of the amount of such bid or any bids, the limiting of the bids or bidders, the parceling or farming out to any Bidder or the subject matter of the bid or the profits thereof, and that he has not and will not divulge said sealed bid to any person whatever except those having a partnership or other financial interest with him in said bid, until after the said sealed bids are opened.

202.06 – PROPERTY GUARANTY

Proposals will not be considered unless the original filed with the Purchasing Agent is accompanied by a Bidder's bond, or certified or cashier's check in the required amount, made payable to the "Norman Municipal Authority." The check shall be in the amount as designated in the Advertisement. The Proposal Guaranty is required as evidence of good faith and as a guarantee that, if awarded the Contract, the Bidder will execute the contract and furnish the required bonds within the required time.

202.07 – FILING OF PROPOSALS

No proposals will be considered by the Authority unless they are filed in a sealed envelope, with the Purchasing Agent at his office at 201 West Gray Street, Building C, Norman, Oklahoma,

within the time limit for receiving proposals, as stated in the Advertisement. The proposal shall be plainly marked on the envelope with the word "Proposal" and the name of the project.

202.08 – WITHDRAWAL OF PROPOSALS

Permission will not be granted to withdraw or modify and proposal after it has been filed and before the time set for opening proposals. Request for non-consideration of proposals must be made in writing, addressed to the Norman Municipal Authority and filed with the Purchasing Agent before the time set for opening proposals. After other proposals are opened and read, the proposal for which withdrawal is properly requested and granted will be returned unopened.

202.09 – OPENING OF PROPOSALS

The proposals filed with the Purchasing Agent will be opened at the time stated in the Advertisement and shall thereafter remain on file in the office of the Purchasing Agent two (2) days before any Contract will be entered into, based on such proposals. Bidders are invited to attend the opening of the proposals.

202.10 – IRREGULAR PROPOSALS

Proposals will be considered irregular if they show any omissions, alterations of forms, additions or conditions not called for, unauthorized alternate bids or irregularities of any kind. However, the Authority reserves the right to waive technicalities as to changes, alterations or reservations and make the award in the best interest of the Authority.

202.11 – REJECTION OF PROPOSALS

The Authority reserves the right to reject any or all proposals, and all proposals submitted are subject to this reservation. Proposals may be rejected for any of the following specific reasons:

- a. Proposal received after time limit for receiving proposals as stated in the Advertisement.
- b. Proposal prices obviously unbalanced.
- c. Summation of proposal prices on any one project above the Engineer's estimate of cost for such project.
- d. Proposal containing any irregularities.

202.12 – DISQUALIFICATION OF BIDDERS

Bidders will be disqualified and their proposals not considered for any of the following specific reasons:

- a. Where more than one proposal for an individual, firm, partnership or corporation is filed under the same or different names and where such proposals are not identical in every respect.
- b. Reasonable grounds for believing that any Bidder is interested in more than one proposal for the work contemplated or materials to be furnished.
- c. Reason for believing that collusion exists among the Bidders.

- d. The Bidder being in arrears on any existing Contracts, interested in any litigation against the Authority, or having defaulted on a previous Contract.
- e. Lack of competency, as revealed by the financial statement, experience and equipment questionnaires, etc.
- f. Uncompleted work, in the judgment of the Authority, will hinder or prevent the prompt completion of additional work, if awarded.

202.13 – FALSE INFORMATION AFFIDAVIT

Each bidder must submit with the bid proposal a “False Information Affidavit” which states that neither the bidding company nor any other company, owned or previously owned by anyone who is in an ownership or managerial capacity with the bidding company has ever knowingly submitted false information to the Authority.

SECTION 203 – AWARD AND EXECUTION OF CONTRACT

203.01 – CONSIDERATION OF PROPOSALS

After the proposals are opened, those proposals containing unit prices will be tabulated for comparison on the basis of the quantities shown in the approximate estimate. Until the final award of the Contract, the City reserves the right to reject any or all proposals, to waive technicalities and to advertise for new proposals or proceed to do the work otherwise when the best interest of the Authority will be promoted thereby.

203.02 – AWARD OF CONTRACT

The Authority reserves the right to withhold the award of the Contract for a reasonable period of time from the date of opening the proposals and no award will be made until the necessary investigations are made as to the responsibility of the low Bidder. No Contract will be awarded until at least 24 hours after opening the proposals. The awarding of the Contract shall give the Bidder no right of action or claim against the Authority upon such Contract until the execution of the Contract shall have been completed and the Contract delivered to the Contractor. The Authority reserves the right to award all or any portion of the work.

203.03 – RETURN OF PROPOSAL GUARANTY

As soon as the proposal prices have been compared, the Authority may, at its discretion, return the proposal guaranties accompanying those proposals which, in its judgment would not be considered in making the award. After the award is made, only the successful Bidder's check will be retained until the required Contract and Bonds have been executed, after which it will be returned to the Bidder. Should the awarding of the Contract be delayed more than thirty (30) days, all Bidders' checks will be returned, unless such delay is from causes beyond the control of the Authority, and, in such event, the proposal and Bidder's check, of any Bidder, will be returned at the Bidder's option.

203.04 – SURETY BONDS

With the execution of delivery of the Contract, the Contractor shall furnish and file with the Authority in the amounts required, the following surety bonds:

- a. A good and sufficient Performance Bond in an amount equal to one hundred (100%) percent of the approximate total amount of the Contract, guaranteeing the full and faithful execution of the work and performance of the Contract and for the protection of the Authority and all property owners interested against any damage by reason of negligence of the Contractor, or the improper execution of the work or the use of inferior materials.
- b. A good and sufficient Statutory Bond in an amount equal to one hundred (100%) percent of the approximate total amount of the Contract, guaranteeing payment for all labor, materials, and equipment used in the construction of the improvements.
- c. A good and sufficient Maintenance Bond in an amount equal to one hundred (100%) percent of the total amount of the Contract, guaranteeing the maintenance in good condition of such improvements for a period to one (1) year from and after the time of the completion and acceptance by the City of said improvements.

No Surety will be accepted who is now in default or delinquent on any bond or who is interested in any litigation against the Authority. All bonds shall be made on forms furnished by the Authority and shall be executed by surety companies licensed to do business in the State of Oklahoma and acceptable to the Authority. Each bond shall be executed by the Contractor and the Surety. Should any Surety on the Contract be determined unsatisfactory at any time by the Authority, notice will be given to the Contractor to that effect, and the Contractor shall forthwith substitute a new Surety or Sureties satisfactory to the Authority. No payment will be made under the Contract until the new Surety or Sureties, as required, have qualified and been accepted by the Authority. The Contract shall not be operative nor shall any payments be due until approval of the bonds has been made to the Authority.

203.05 – EXECUTION OF CONTRACT

The person or persons, partnership, company, firm, or corporation to whom the Contract is to be awarded, shall sign the necessary agreements entering into the required Contract with the Authority and execute and deliver the required bonds.

No Contract shall be binding on the City until it has been approved by the City Attorney, executed by the Authority, and delivered to the Contractor.

203.06 – FAILURE TO EXECUTE CONTRACT

Upon failure of the Bidder to execute the required bonds or to sign the required Contract after the Contract is transmitted to the Contractor, he will be considered to have abandoned his proposal. By reason of the uncertainty of market prices of the materials and labor and it being impracticable and extremely difficult to fix the amount of damages to which the Authority would be put by reason of said Bidder's failure to execute said Bonds and Contract, the proposal guaranty accompanying the proposal shall be the agreed amount of damages which the Authority will suffer by reason of such failure on the part of the Bidder and shall thereupon be retained by the City as liquidated damages. The filing of a proposal will be considered as an acceptance of this provision.

Time is of the essence. The Parties stipulate that the damage for failure to complete the project within the designated Substantial Completion date is \$500 per day, including \$500 per day for each day exceeding 30 past the Substantial Completion date.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed, in multiple copies on the respective dates herein below reflected to be effective on the date executed by the Authority Chairperson of the Norman Municipal Authority.

CONTRACTOR

By: 

Corporate Seal, where applicable:

Name: Ryan Rebsamen

Title: Vice President

ATTEST:

By: 

Title: Project Manager

Contract Affidavit

STATE OF Oklahoma)
COUNTY OF Oklahoma)

Ryan Rebsamen, of lawful age, being first duly sworn; on oath says that (s)he is the agent authorized by CONTRACTOR to submit the above CONTRACT to the CITY. Affiant further states that CONTRACTOR has not paid, given, donated, or agreed to pay the above CONTRACT or give or donate to any officer or employee of the CITY any money or other thing of value, either directly or indirectly, in the procuring of the CONTRACT.


Signature

Submitted and sworn to before me this 27 day of March, 2019.


Notary Public

Commission Number: 17008441

My Commission Expires: 09/08/21




OWNER

By: _____
Lynne Miller, Chairperson

ATTEST:

By: _____
Brenda Hall, Secretary

Approved as to form and legality this 1 day of April, 2019.



City Attorney

AFFIDAVIT

STATE OF Oklahoma

P.O. No. _____

COUNTY OF Oklahoma

INVOICE No. _____

AMOUNT _____

The undersigned contractor, of lawful age, being duly sworn, on oath says that this invoice or claim is true and correct and that (s)he is authorized to submit the invoice pursuant to an approved Contract. Affiant further states that the work, as shown by this invoice, has been completed in accordance with the plans and specifications furnished the Affiant. Affiant further states that (s)he has made no payments, given, or donated or agreed to pay, give or donate, either directly or indirectly, to any elected official, officer or employee of the City of Norman, money or any other thing of value to obtain payment of the invoice or to procure award of this Contract order pursuant to which an invoice is submitted.

Company Name

Engineer or Supervisory Official

Submitted and sworn to before me this 27 day of March, 2019.

Alondra Quintero

Notary Public

Commission Number: 17008441

My Commission Expires: 09/08/21



This form must be completed and submitted before any invoice over \$12,500.00 can be processed for payment.