



Office of Management & Enterprise Services ■ Capital Assets Management ■ Construction and Properties

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

AGREEMENT made as of the _____ day of _____ in the year 20____

BETWEEN THE OWNER:

State of Oklahoma
OMES/CAM/CAP
P.O. BOX 53448
Oklahoma City, OK 73152-3448
cap@omes.ok.gov

PROJECT:

<u>PROJECTNUMBER</u>	<u>UPOPONUMBERTXT16</u>
<i>(Cap Project Number)</i>	<i>(Purchase Order Number)</i>
<u>Project Name</u>	
<i>(Project Name)</i>	
<u>LOCATION</u>	
<i>(Address/Location)</i>	

ON BEHALF OF THE USING AGENCY:

AGENCYNAMETB50
(Using Agency Name)

AND THE CONSTRUCTION MANAGER (as Constructor):

<u>Company Name</u>	<u>City, State Zip</u>	
<i>(Company Name)</i>	<i>(City, State ZIP)</i>	
<u>Address</u>	<u>Email</u>	<u>Phone</u>
<i>(Address)</i>	<i>(Email)</i>	<i>(Telephone Number)</i>

In consideration of the mutual covenants and obligations contained herein, Owner, Using Agency and Contractor agree as set forth herein.

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 Owner's Representative (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, Owner's Representative, 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 CAP Form A201 *General Conditions of the Contract for Construction*, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceeds concurrently, the General Conditions shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in the General Conditions shall mean the Construction Manager.

1.3 Rules and Procedures. The Contractor shall follow the current adopted Rules and procedures established by Construction and Properties of the Department of Real Estate Services, Capital Assets Management, Office of Management and Enterprise Services, State of Oklahoma to ensure compliance with state statutes.

ARTICLE 2: Construction Manager's Responsibilities.

The Construction Manager shall perform the services described in this Article. The services to be provided under Subparagraphs 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Owner's Representative, 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 Owner's Representative shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Owner's Representative 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 Subparagraph 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Owner's Representatives review and the Owner's approval. The Construction Manager shall obtain the Owner's Representatives approval of the portion of the preliminary Project schedule relating to the performance of the Owner's Representatives services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Owner's Representative 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 Owner's Representative.

2.1.4 Phased Construction. The Construction Manager shall make recommendations to the Owner and Owner's Representative 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.

a. When the Owner has sufficiently identified the Project requirements and the Owner's Representative has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Owner's Representative and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

b. When Schematic Design Documents have been prepared by the Owner's Representative and approved by the Owner, the Construction Manager shall prepare, for the review of the Owner's Representative 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, Owner's Representative and Construction Manager.

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

d. 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 Owner's Representative.

2.1.6 Subcontractors and Suppliers. The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Owner's Representative for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner's Representative will promptly reply in writing to the Construction Manager if the Owner's Representative or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Owner's Representative to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Owner's Representative later to object to or reject any proposed subcontractor or supplier.

2.1.7 Long-lead Time Items. The Construction Manager shall recommend to the Owner and Owner's Representative 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 Owner's Representative 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, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Owner's Representative that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Subparagraph 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

2.2.4 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:

a. 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.

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

c. 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.

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

e. 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.

2.2.5 The Construction Manager shall meet with the Owner and Owner's Representative to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Owner's Representative 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.

2.2.6 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.

2.2.7 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.

2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in a Guaranteed Maximum Price Amendment. 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.

2.2.9 The Owner shall authorize and cause the Owner's Representative to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Owner's Representative and Construction Manager. The Construction Manager shall promptly notify the Owner's Representative and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

2.2.10 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.

2.3 Construction Phase – Phase Two Services.

2.3.1 General. The Construction Phase shall commence on the Owner's acceptance of the Lump Sum Price proposal and the issuance of a Notice to Proceed or Work Order.

2.3.2 Administration.

a. The Owner shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work and, after analyzing such bids, shall deliver such bids to the Construction Manager and Owner's Representative. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Owner's Representative, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

b. 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.

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

d. After the subcontractors are selected, the Construction Manager shall convert the Guaranteed Maximum Price to a Lump Sum Price.

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

f. Promptly after the Owner's acceptance of the Lump Sum Price proposal, the Construction Manager shall prepare a schedule in accordance with Subparagraph 3.10 of the General Conditions, including the Owner's occupancy requirements.

g. The Construction Manager shall provide monthly written reports to the Owner and Owner's Representative 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 Owner's Representative.

h. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Owner's Representative at regular intervals.

2.4 Professional Services. Article 4, "Administration of the Contract", of the General Conditions shall apply to both the Preconstruction and Construction Phases.

2.5 Hazardous Materials. Article 10 of the General Conditions 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 Owner's Representative, 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 Subparagraphs 3.1.4.a through 3.1.4.d but shall exercise customary precautions relating to the performance of the Work.

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

b. 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.

c. 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.

d. 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.

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

3.1.5 Owner's Designated Representative. The Owner shall designate in writing a project manager 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 General Conditions, the Owner's Representative does not have such authority.

3.1.6 Owner's Representative. The Owner shall retain an Owner's Representative to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of CAP Form B101 Standard Form of Agreement between Owner and Owner's Representative current as of the date of this Agreement. The Owner shall authorize and cause the Owner's Representative to provide those Additional Services described in CAP Form B101, requested by the Construction Manager which must necessarily be provided by the Owner's Representative for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Owner's Representative 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 Owner's Representative, from which compensation provisions may be deleted.

3.1.7 Legal Requirements. The Owner shall determine and advise the Owner's Representative 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 Subparagraph 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 Subparagraphs 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

4.1.1 Preconstruction Services:

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 Subparagraph 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: [Lump Sum Fee or Percentage Fee or Hourly Rates or Other].

5.1.2 General Conditions (Reimbursable Costs): Refer to Proposal.

5.2 Lump Sum Price. The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in the Guaranteed Maximum Price Amendment, 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 Lump Sum 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 Lump Sum Price on account of changes in the Work subsequent to the execution of Guaranteed Maximum Price Amendment may be determined by any of the methods listed in the General Conditions.

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 General Conditions and the terms "costs" and "a reasonable allowance for overhead and profit" as used in the General Conditions 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 General Conditions 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 Subparagraph 5.1.1 of this Agreement.

5.3.4 If no specific provision is made in Subparagraph 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 Subparagraph 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.

ARTICLE 6: Cost of 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.

a. 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.

b. Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.

c. 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.

d. 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 Subparagraphs 6.1.2.a through 6.1.2.c.

6.1.3 Subcontract Costs. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

6.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction.

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

b. Costs of materials described in the preceding Subparagraph 6.1.4.a 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.

a. 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.

b. 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 subject to the Owner's prior approval.

c. Costs of removal of debris from the site.

d. Reproduction costs, 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.

e. 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.

6.1.6 Miscellaneous Costs.

a. That portion directly attributable to this Contract of premiums for insurance and bonds.

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

c. 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.

d. 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 Subparagraph 6.1.8.b.

e. 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 General Conditions or other provisions of the Contract Documents.

f. Data processing costs related to the Work.

g. 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.

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

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 Non-conforming Work. The Cost of the Work shall also include costs described in Subparagraph 6.1.1 which are incurred by the Construction Manager:

a. 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 General Conditions.

b. 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 Subparagraphs 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of the General Conditions other Conditions of the Contract which may require the Construction Manager to pay such costs unless such costs are excluded by the provisions of Subparagraph 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 Subparagraphs 6.1.2.b and 6.1.2.c.

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

6.2.3 Overhead and general expenses, except as may be expressly included in Subparagraph 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 Subparagraph 6.1.5.b.

6.2.6 Except as provided in Subparagraph 6.1.8.b, costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the Owner set forth in this Agreement.

6.2.7 Costs incurred in the performance of Preconstruction Phase Services.

6.2.8 Except as provided in Subparagraph 6.1.7, any cost not specifically and expressly described in Subparagraph 6.1.

6.2.9 Costs which would cause the Lump Sum to be exceeded.

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 Subparagraph 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 State, the Construction Manager agrees any pertinent 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.

ARTICLE 7: Construction Phase.

7.1 Progress Payments.

7.1.1 Based upon Applications for Payment submitted to the Owner's Representative by the Construction Manager and Certificates for Payment issued by the Owner's Representative, 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 Owner's Representative 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.

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 Lump Sum 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 Owner's Representative or Owner may require. This schedule, unless objected to by the Owner's Representative 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:
a. Take that portion of the Lump Sum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Lump Sum 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 General Conditions even though the Lump Sum Price has not yet been adjusted by Change Order.

b. 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.

c. Add the Construction Manager's Fee, less retainage of five percent (5%) for the first fifty percent (50%) of Work, then two and one-half percent (2.5%) for the remaining Work. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Subparagraphs at the rate stated in Subparagraph 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Subparagraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Subparagraphs bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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

f. Subtract amounts, if any, for which the Owner's Representative has withheld or nullified a Certificate for Payment as provided in the General Conditions.

7.1.7 Reserved.

7.1.8 Payments to Subcontractors shall be subject to retention in accordance with the General Conditions. The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

7.1.9 In taking action on the Construction Manager's Applications for Payment, the Owner's Representative 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 Owner's Representative has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 7.1.4 or other supporting data, that the Owner's Representative has made exhaustive or continuous on-site inspections or that the Owner's Representative 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 General Conditions, 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 Owner's Representative and approved by the Owner; such final payment shall be made by the Owner not more than 30 days after the issuance of the Owner's Representative's final Certificate for Payment and the Owner's approval.

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

a. 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 Lump Sum Price.

b. Subtract amounts, if any, for which the Owner's Representative withholds, in whole or in part, a final Certificate for Payment as provided in the General Conditions or other provisions of the Contract Documents.

c. 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 Owner's Representative 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 Subparagraph 7.2.1 have been met, the Owner's Representative 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

Owner's Representative's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of the General Conditions. The time periods stated in this Subparagraph 7.2 supersede those stated in Subparagraph 9.4.1 of the General Conditions.

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 Owner's Representative. All claims of any disputed amount shall be submitted in accordance with Subparagraph 4.4 of the General Conditions and shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Owner's Representative'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 Owner's Representative'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 Subparagraph 6.1 and not excluded by Subparagraph 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 Lump Sum Price.

ARTICLE 8: Insurance and Bonds.

8.1 Insurance Requirements of the Construction Manager. During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Article 11 of the General Conditions. 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

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

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

8.2 Performance Bond and Payment Bond.

8.2.1 The Construction Manager shall furnish performance, payment and defect 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 General Conditions.

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 CAP Form A201 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 General Conditions 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.

a. Oklahoma Taxpayer and Citizen Protection Act of 2007. The Construction Manager certifies that it and all proposed subcontractors and suppliers, whether known or unknown at the time this contract is executed or awarded, will comply with the provisions of the Oklahoma Taxpayer and Citizen Protection Act of 2007 and participate in the Status Verification System. The Status Verification System is defined in the Oklahoma Statutes, Title 25 §1312.

b. State of Oklahoma Governor's Executive Order 2012-01. Per the State of Oklahoma Governor's Executive Order 2012-01, filed February 6, 2012, and effective July 1, 2012, the use of any tobacco product shall be prohibited on any and all properties owned, leased or contracted for use by the State of Oklahoma, including but not limited to all buildings, land and vehicles owned, leased or contracted for use by agencies or instrumentalities of the State of Oklahoma.

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 Subparagraph 13.2.1 of the General Conditions, 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 and Suspension.

10.1 Termination Prior to Establishing Guaranteed Maximum Price.

10.1.1 Prior to execution by both parties of Guaranteed Maximum Price Amendment 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 Subparagraph 14.1.1 of the General Conditions.

10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Subparagraph 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 Subparagraph 4.1.1.

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

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

b. Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Subparagraph 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Subparagraph, 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.

c. 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 Subparagraph 10.1.3.a. 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 Guaranteed Maximum Price Amendment 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 Guaranteed Maximum Price Amendment, the Contract may be terminated as provided in Article 14 of the General Conditions.

10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Subparagraph 14.1.3 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Subparagraphs 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 Subparagraph 14.1.3 of the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive under Subparagraphs 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.

10.2.3 SUSPENSION: The Work may be suspended by the Owner as provided in Article 14 of the General Conditions; in such case, the Lump Sum Price, if established, shall be increased as provided in Subparagraph 14.3.2 of the General Conditions except that the term "cost of performance of the Contract" in that Subparagraph 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 Subparagraphs 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11: Other Conditions and Services.

11.1.1 **None.**

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

Purchase Order

Notice to Proceed/Work Order (for Each Phase)

[Insert or DELETE]

This agreement is entered into as of the day and year first written above and is executed in at least four original copies, of which one is to be delivered to the Contractor, one to the Owner's Representative for use in the administration of the Contract, and the remainder to the Owner and Using Agency.

OWNER:

State of Oklahoma
Office of Management and Enterprise Services
Capital Assets Management
Construction and Properties

USING AGENCY:

The Using Agency certifies that funds are available and dedicated to complete the contract sums stated in this Contract. The Using Agency agrees to pay all project related costs including but not limited to work related to unknown site conditions, remediation of discovered environmental conditions, legal expenses, judgments, and any reasonable project related expense.

(Owner's Signature)

(Date Signed)

(Authorized Representatives Signature)

(Date Signed)

(Owner's Printed Name)

(Authorized Representatives Printed Name)

(Owner's Printed Title)

(Authorized Representatives Printed Title)

CONSTRUCTION MANAGER:

Non-Collusion Statement

The Authorized Representative for the Contractor, of lawful age, solemnly swears or affirms, under penalty of perjury, that (s)he is the duly authorized agent of the Company indicated herein 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.

Exhibits/Attachments list:

(Authorized Representative Signature)

(Date Signed)

1. CAP Form A201 General Conditions of the Contract for Construction;

(Authorized Representative Printed Name)

2. Supplementary Conditions – FEB 2020

(Authorized Representative Printed Title)

(EIN/TIN number)