

ATTACHMENT 2 SAMPLE SUBCONTRACT AGREEMENT

SUBCONTRACT DATE:

PROJECT NAME:

STREET ADDRESS:

THIS AGREEMENT, effective by and between:

CONTRACTOR

CHEROKEE NATION CONSTRUCTION

RESOURCES, LLC

10838 E. Marshall Street, Suite 220

Tulsa, OK 74107-2818

(918) 582-9110

SUBCONTRACTOR

WHEREAS, in consideration of the mutual promises herein contained, Cherokee Nation Construction Resources, LLC and Subcontractor agree, promise, and obligate themselves as follows:

- A. **SCOPE OF SERVICES:** A written definition of the specific scope of services (hereinafter referred to as “Services”) to be performed by Subcontractor is set forth in Appendix A, Scope of Services, attached hereto and made a part hereof.
- B. **APPOINTMENT AND UNDERTAKING OF SUBCONTRACTOR:** Cherokee Nation Construction Resources, LLC hereby constitutes and appoints Subcontractor as its agent to perform, or cause to be performed, those Services described in Appendix A, Scope of Services, in accordance with the Contract Documents and to act generally for Cherokee Nation Construction Resources, LLC in all matters duly assigned in connection therewith. Subcontractor hereby accepts such appointment and agrees to perform its duties hereunder in accordance with all laws, regulations, applicable codes, and instructions of Cherokee Nation Construction Resources, LLC and with the provisions of this Agreement.
- C. **COMPENSATION AND TERMS OF PAYMENT:** Services shall be performed within the scope mutually agreed upon between Subcontractor and Cherokee Nation Construction Resources, LLC. Cherokee Nation Construction Resources, LLC agrees to pay Subcontractor for full, accurate and timely performance of the work the compensation provided herein.

This work will be done on a **Fixed Price** basis for the amount of:

\$

- D. The “Contract Documents” consist of this Subcontract Agreement (“Agreement”), and the following appendices, which appendices shall be incorporated by reference herein:

Appendix A - Scope of Services (including any applicable drawings and specifications)

Appendix B - Cherokee Nation Property Management Standard Construction Terms and Conditions

Appendix C - Cherokee Nation Health Clinic Request for Proposal (RFP) Bid Documents: (Check if Attached)

Appendix D - Additional/Special Terms: (Check if Attached)

Appendix E - Health & Safety Plan: (Check if Attached)

If not attached, Subcontractor shall be responsible for obtaining copies of the Cherokee Nation Health Clinic Request for Proposal (RFP) Bid Documents, Additional / Specialty Terms, and the Health & Safety Plan from Contractor.

The foregoing constitutes the entire understanding between the parties, and supersedes all prior proposals, negotiations, agreements, awards, letters of intent and written or oral statements, representations or agreements. No modification shall be effective except in writing and executed by both parties.

In the event of an inconsistency or conflict between provisions of the Contract Documents, the inconsistency or conflict shall be resolved by giving precedence as follows: 1) this Subcontract Agreement, 2) the Scope of Services, 3) the Standard Construction Terms and Conditions, 4) the Cherokee Nation Health Clinic Request for Proposal (RFP) Bid Documents, 5) Additional/Special Terms, and 6) the Health & Safety Plan.

E. In Witness Whereof, the parties have executed this Agreement as of the day and year stated above. The Effective Date set forth above is the date as to which all Contract Documents have reference for purposes of coordination of their meaning and effect.

**CHEROKEE NATION CONSTRUCTION
RESOURCES, LLC**

SUBCONTRACTOR

By: _____
Title: _____
Typed Name: _____

By: _____
Title: _____
Typed Name: _____

SAMPLE

APPENDIX A

SCOPE OF SERVICES

Owner:
Architect:
Project:

Contractor: Cherokee Nation Construction
Resources, LLC
10838 E. Marshall Street, Suite 220
Tulsa, OK 74116

Subcontractor:

Subcontractor's Work Will Consist of the Following:

SAMPLE

Appendix B

CHEROKEE NATION PROPERTY MANAGEMENT

STANDARD CONSTRUCTION TERMS AND CONDITIONS

Redbird Smith Health Center Annex Addition, Sallisaw, Oklahoma

Cherokee Nation Property Management, LLC.
777 West Cherokee Street
Catoosa, Oklahoma 74015-0515
Telephone (918) 384-7800

TABLE OF CONTENTS

1.	Contract Documents.....	1
2.	The Work	1
3.	The Project.....	1
4.	The Drawings.....	1
5.	The Specifications.....	1
6.	The Project Manual	1
7.	Execution, Correlation and Intent	1
	A. Representation by the Contractor.....	1
	B. Intent of the Contract Documents	2
	C. Organization of Specifications.....	2
	D. Terminology	2
8.	Owner’s Representatives	2
9.	Shop Drawings, Product Data and Samples	2
	A. Shop Drawings.....	2
	B. Product Data	2
	C. Samples.....	2
	D. Review by the Contractor	2
	E. Approval by the Architect.....	3
	F. Representation by the Contractor.....	3
	G. Deviations	3
	H. Specific Attention	3
10.	Use of Site.....	3
11.	Review of Contract Documents and Field Conditions by Contractor	3
	A. Examination of the Job Site	3
	B. Verification of Field Conditions	4
12.	Supervision and Construction Procedures.....	4
	A. Supervision of the Work	4
	B. Responsibility of the Contractor	4
	C. Performance of the Work.....	4
	D. Inspections of the Work.....	4
13.	Labor and Materials	4
	A. Payment	4
	B. Enforcement of Discipline.....	5
	C. Sufficient Labor, Materials and Other Suppliers	5
14.	Permits, Fees and Notices	5
	A. Permits and Licenses	5
	B. Compliance With Laws	5
	C. Responsibility of Contractor.....	5
15.	Schedule, Pre-Construction Meeting and Superintendent	5
	A. Schedule.....	5
	B. Preliminary Meeting	6
	C. Superintendent	6
16.	Time of the Essence	7
17.	Furnishing and Ownership of Documents.....	7
	A. Copies of Drawings and Specifications	7
	B. Property of Owner	7
	C. Forms	7
	D. Requirements Provided by Owner	7
18.	Invoicing and Payment	8
	A. Payment	8
	B. Schedule of Values	8

	C.	Payment Applications	8
	D.	Unconditional Progress Payment Releases	8
	E.	Payment Including Change Order.....	9
	F.	Contractor’s Affidavit.....	9
	G.	Payment to Third Parties.....	9
	H.	Payment for Materials Stored On Site	9
	I.	Certificate for Payment.....	9
	J.	Decisions to Withhold Payment.....	10
	K.	Final Payment	10
19.		Completion.....	11
	A.	Substantial Completion.....	11
	B.	Right to Occupy before Substantial Completion	12
	C.	Inspections by the Contractor and Punch List.....	12
	D.	Inspections by Owner and Punch List.....	12
	E.	Certificate of Substantial Completion.....	13
	F.	Owner’s Receipt of Fixtures and Equipment	13
	G.	Exterior Closed and Locked.....	13
	H.	Final Completion	13
20.		Construction by Owner or by Special Subcontractors.....	13
	A.	Owner’s Right to Perform Construction and to Award Separate Contracts.....	13
	B.	Mutual Responsibility	14
21.		Subcontractors and Suppliers	14
	A.	Subcontractual Relations	14
	B.	Award of Subcontracts and Other Contracts for Portions of the Work.....	14
	C.	Contractor’s Subcontracts	15
	D.	Certificates of Insurance	15
	E.	Contingent Assignment of Subcontracts.....	15
22.		Insurance.....	15
	A.	Contractor’s Liability Insurance	15
	B.	Thirty (30) Day Notice Clause.....	16
	C.	Subrogation.....	16
	D.	Additional Insured	16
	E.	Non-Renewal or Cancellation.....	16
	F.	Non-Liability for Contractor’s Loss	17
	G.	Other Risks	17
	H.	Insurance Companies to be Licensed.....	17
23.		Contractor’s Bond.....	17
24.		Safety Regulations and Safety of Persons and Property	17
	A.	Safety Plan.....	17
	B.	Safety Representations.....	17
	C.	Protective Equipment.....	17
	D.	Right to Know.....	18
	E.	Drug Testing	18
25.		Cooperation With Other Contractors	18
26.		Representations and Warranties.....	18
	A.	General Representations and Warranties	18
	B.	Warranty Exclusions.....	18
	C.	Warranty Period.....	19
	D.	Named Products.....	19
	E.	Other Specified Products	19
	F.	Warranty on Substantial Completion.....	19
	G.	Third Party Suppliers Warranty	19
27.		Liens	20
28.		Inspection and Correction of Work.....	20
29.		Interference, Clean-up, Defective Work, Inspection of Facilities, and Cutting and Patching.....	20

A.	Interference	20
B.	Cleaning Up	20
C.	Owner’s Right to Clean Up	21
D.	Correction of Defective Work	21
E.	Remedies for Failure to Cure Defective Work	21
F.	Inspection Facilities and Cost	21
G.	Cutting and Patching	21
H.	Non-waiver	22
30.	Hazardous Materials.....	22
A.	Hazardous Materials Brought on or Produced on the Site	22
B.	Hazardous Materials Found on the Site	22
31.	Taxes.....	22
32.	Compliance with Laws.....	23
33.	Changes in the Work; Change Orders	23
A.	Changes in the Work.....	23
B.	Change Order.....	23
C.	Construction Change Directives	24
D.	Adjustment to Contract Price.....	24
E.	Information Required.....	24
F.	Contractor to Proceed with the Work	25
G.	Failure to Agree	25
H.	Contract Price Decrease	25
I.	Pending Final Determination of Total Cost	26
J.	Agreement Between Contractor and Owner	26
K.	Claim for Additional Costs and/or Time.....	26
34.	Term	26
35.	Stop Work	26
36.	Owner’s Right to Carry Out the Work	26
37.	Termination for Cause	27
38.	Suspension and Termination for Convenience	27
39.	Title.....	27
40.	Uncovering and Correction of Work.....	27
A.	Uncovering of Work Contrary to Request	28
B.	Uncovering of Work Not Specifically Requested.....	28
C.	Prompt Correction of Covered Work.....	28
D.	Long Term Correction of Covered Work	28
E.	Removal of Work From the Job Site by Contractor	28
F.	Correction of the Work by Owner	28
G.	Cost of Correcting the Work.....	29
H.	No Established Limitation	29
I.	Acceptance of Nonconforming Work	29
41.	Tests and Inspections	29
A.	Compliance With Laws	29
B.	Additional Testing	29
C.	Testing Which Reveals Nonconforming Work.....	30
D.	Required Certificates	30
E.	Prompt Testing.....	30
42.	Claims and Disputes.....	31
A.	Claims	31
B.	Referral to the Architect	31
C.	Timing of Making a Claim	31
D.	Diligent Performance of the Work Pending a Claim	31
E.	Claims for Additional Cost	31
F.	Claims for Additional Time.....	31
G.	Notice of a Claim.....	32

43.	Resolution of Claims and Disputes	32
	A. Review of Claims by the Architect	32
	B. Documentation of the Resolution of a Claim.....	32
	C. Additional Information for Unresolved Claims	32
	D. Architect’s Decision Relating to Unresolved Claims	32
	E. Governing Law, Jurisdiction and Waiver of Venue.....	32
44.	Indemnification.....	33
	A. Indemnification-General.....	33
	B. Indemnification-Taxes	33
	C. Participation by Cherokee Nation Group.....	33
	D. Patent Infringement.....	33
45.	Consequential Loss or Damage	34
46.	Patents	34
47.	Work Product	34
	A. New Work Created	34
	B. Drawings and Specifications.....	34
	C. As-Built Drawings	35
48.	Delay	35
	A. Force Majeure	35
	B. Normal Weather Conditions	35
	C. Delay Caused by Owner or Others	35
	D. Time for Claim Submission	35
49.	Independent Contractor	36
	A. Independent Contractor.....	36
	B. Payment of Taxes	36
	C. Reporting Requirements	36
	D. Waiver of Benefits	36
50.	Contractor’s Personnel	37
51.	Improper Payments.....	37
52.	Alcohol and Drug Policy	37
53.	Audit	37
54.	Publicity	37
55.	Confidential and Proprietary Information	38
	A. Confidentiality	38
	B. Return of Confidential Information	38
	C. Fiduciary Trust.....	38
	D. Protection of Proprietary and Confidential Information	38
56.	Assignment of Contract	39
57.	Notices	39
58.	Litigation Costs; Attorneys’ Fees.....	39
59.	Liquidated Damages	39
60.	Headings; Severability	39
61.	Incorporation by Reference; Survival	39
62.	Waiver	40
63.	Notice of Claims.....	40
64.	Reference to Liens Shall Not be Construed to Create Right to a Lien.	40
65.	No Waiver of Sovereign Immunity.	Error! Bookmark not defined.
66.	Binding Agreement	40

**CHEROKEE NATION PROPERTY MANAGEMENT
STANDARD CONSTRUCTION TERMS AND CONDITIONS**

The following are Cherokee Nation Property Management’s Standard Construction Terms and Conditions, which shall be incorporated by reference in any agreement, contract, letter of intent, or understanding of any kind or nature whatsoever (hereinafter referred to as “**Contract**”) between Cherokee Nation Property Management, LLC (hereinafter referred to as “**Owner**”), Cherokee Nation Construction Resources, as Design/Builder, and any contractor, subcontractor, supplier, design professional, consultant or any other person or persons who perform services or provide materials in connection with any Work performed in the completion of the Project (hereinafter referred to collectively as “**Contractor**”). Contractor shall also refer to Cherokee Nation Construction Resources, LLC, where applicable.

1. **Contract Documents.** The Contract Documents shall consist of the Contract, Owner’s Standard Construction Terms and Conditions; any general, supplementary or other conditions adopted by Owner and agreed to by Contractor; the Drawings and Specifications for the Work; addenda issued prior to the execution of this Contract; and modifications issued after the execution of this Contract.
2. **The Work.** The “**Work**” shall include all necessary construction services of any kind or nature in connection with the construction for Owner of a health care clinic to be located in Sallisaw, Oklahoma (Redbird Smith Annex Renovation and Addition), (hereinafter referred to as the “**Project**”), in accordance with the Contract Documents. (The location of the Project is also referred to as the “**Job Site.**”)
3. **The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner or by the Contractor.
4. **The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, general including plans, elevations, sections, details, schedules and diagrams.
5. **The Specifications.** The Specifications 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.
6. **The Project Manual.** The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Owner’s Standard Construction Terms and Conditions, the Contract, and Specifications.
7. **Execution, Correlation and Intent.**
 - A. **Representation by the Contractor.** Execution of the Contract by the Contractor is a representation that the Contractor has visited the Job Site, become familiar

with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

- B. **Intent of the Contract Documents.** 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 only be required to the extent consistent with the Contract Documents.
 - C. **Organization of Specifications.** Organization of the Specifications into divisions, sections and articles and arrangement of Drawings shall not control the Contractor in dividing the Work among its contractors or subcontractors or in establishing the extent of Work to be performed by any trade.
 - D. **Terminology.** 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.
8. **Owner's Representatives.** Owner's Representatives shall be its Director of Construction Projects or his designee ("**Director**"). When referred to throughout the Contract Documents, Owner's Representative or Owner shall refer to its Director except when specifically listed. The primary contact for Owner during the day-to-day course of the Work shall be Owner's Director. This individual will be identified at the Pre-construction Meeting. The Director shall be the initial contact for Project coordination and materials and equipment supplied by Owner and delivered to Job Site.
9. **Shop Drawings, Product Data and Samples.**
- A. **Shop Drawings.** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or its subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
 - B. **Product Data.** 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.
 - C. **Samples.** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
 - D. **Review by the Contractor.** The Contractor shall review, approve and submit—to the Architect and Owner—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 Owner or of separate contractors.

- E. Approval by the Architect.** 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 Architect and Owner. Such Work shall be in accordance with approved submittals.
- F. Representation by the Contractor.** 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.
- G. Deviations.** The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect and Owner's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect and Owner in writing of such deviation at the time of submittal and the Architect and Owner have 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 Architect and Owner's approval thereof.
- H. Specific Attention.** 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 Architect or Owner on previous submittals.
- 10. Use of Site.** The Contractor shall confine operations at the Job Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
- 11. Review of Contract Documents and Field Conditions by Contractor:**
- A. Examination of the Job Site.** The Contractor is expected to carefully examine the Job Site of the proposed Work, the Plans, Specifications, and Contract forms. He shall satisfy himself as to the character, quality, and quantities of Work to be performed, materials to be furnished, and as to the requirements of the proposed Contract. The submission of a bid and/or the execution of a Contract between Owner and any contractor, subcontractor, supplier, design professional, consultant or any other person or persons who perform services or provide materials in connection with any Work performed in the completion of the Project shall be prima facie evidence that the Contractor has made such examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the proposed Contract, Plans and Specifications. Boring logs and other records of subsurface investigations and tests are available for inspection by the Contractor. It is understood and agreed that such subsurface

information, whether included in the Plans, Specifications, or otherwise made available to the Contractor, was obtained and is intended for Owner's design and estimating purposes only. Such information has been made available for the convenience of all contractors. It is further understood and agreed that each contractor is solely responsible for all assumptions, deductions, or conclusions which he may make or obtain from his examination of the boring logs and other records of subsurface investigations and tests that are furnished by Owner. No additional payment shall be made to Contractor as a result of any subsurface conditions which may be encountered in the performance of the Work, regardless of whether such conditions are identified in the boring logs and other records of subsurface investigations and tests that are furnished by Owner.

- B. **Verification of Field Conditions.** 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 at once to Owner.

12. **Supervision and Construction Procedures.**

- A. **Supervision of the Work.** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be responsible for 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.
- B. **Responsibility of the Contractor.** The Contractor shall be responsible to Owner for acts and omissions of the Contractor's employees, contractors, subcontractors and their agents and employees, and other persons performing portions of the Work under a contract or subcontract with the Contractor.
- C. **Performance of the Work.** The Contractor shall not be relieved of obligations to performing the Work in accordance with the Contract Documents either by activities or duties of the Architect or by tests, inspections or approvals required or performed by persons other than the Contractor.
- D. **Inspections of the Work.** 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.

13. **Labor and Materials.**

- A. **Payment.** Unless otherwise provided in the Contract or 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.

- B. **Enforcement of Discipline.** 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.
- C. **Sufficient Labor, Materials and Other Suppliers.** Contractor shall diligently prosecute the Work, providing sufficient labor, materials and other supplies at all times to assure performance of the Work in an orderly fashion and to ensure the Work is essentially complete by the date and time for Substantial Completion as defined in the Contract.

14. **Permits, Fees and Notices.**

- A. **Permits and Licenses.** Contractor shall secure or cause to be secured through its subcontractors all permits and licenses and shall pay all fees necessary for the lawful and proper performance of the Work, except for fees assessed by the Tribal Employment Rights Office ("TERO") of the Cherokee Nation, which fees shall be paid by Design/Builder and reimbursed by Owner. Contractor shall determine the amount of building permit fees, development impact fees, gas, sewer and/or water tap fees, and all other fees for water, sewer, and electric, including connection fees and deposits required for the Work. Contractor shall complete all required applications and obtain related permits on Owner behalf. The cost shall be the sole responsibility of the Contractor. Owner will reimburse Contractor for the cost of fees and licenses with no mark-up or pay directly at Owner's option if time allows.
- B. **Compliance With Laws.** 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.
- C. **Responsibility of Contractor.** If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

15. **Schedule, Pre-Construction Meeting and Superintendent.**

- A. **Schedule.** Owner and Contractor agree that a firm construction schedule is critical to project completion. Promptly after contract award, Contractor shall deliver to Owner and the Architect its Critical Path Method (CPM) construction schedule ("**Schedule**") for the Work in a form approved by Owner. For purposes hereof, a CPM Schedule is defined as a planning, scheduling and control

technique where a construction project is completely planned and scheduled and an arrow diagram drawn to show the interconnected individual tasks involved in constructing the Project, which permits determination of the relative significance of each event, and establishes the optimum sequence and duration of operations. This Schedule shall identify all milestones (including Contractor-imposed milestones) and the activities related thereto. This Schedule shall not exceed the time limits set forth under the Contract Documents. The Schedule shall be revised at appropriate intervals as required by the conditions of the Work, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Owner and the Design/Builder shall review and approve the Schedule and thereafter may request Contractor to make further changes and modifications. Contractor shall perform the Work or cause the Work to be performed in accordance with the most recent Schedule submitted to and approved in writing by Owner and Contractor. The Schedule shall be incorporated into the Contract as if fully set out herein. Contractor shall become obligated to complete or cause to be completed the various portions of the Work in accordance with starting and completion dates stated therein. During the performance of the Work, Contractor shall maintain at the Job Site a progress schedule showing the degree of completion of each segment of the Work. Contractor shall provide Owner with weekly progress reports as required by Owner sufficient to allow Owner to request revisions to the Schedule to ensure that the Project Work is completed by the time for Substantial Completion. Contractor shall promptly respond to schedule change requests within the time specified. The Schedule shall include the timing of any materials or work to be supplied by Owner.

- B. Preliminary Meeting.** Contractor, upon award of the Contract and before construction commences, shall schedule a meeting with Owner and the Architect. Contractor shall instruct all special contractors and subcontractors whose work is considered significant to the completion of the Project by Contractor or Owner to attend this meeting. Contractor shall bring to this meeting the Schedule, prepared pursuant to Paragraph 15(A) hereof, a complete list of subcontractors for all phases of the Work, including those not previously submitted on the Bid Form and a completed Schedule of Values. The location of this meeting shall be the Design/Builder's office for the Project.
- C. Superintendent.** Prior to the commencement of the Work, Design/Builder shall designate a competent superintendent ("**Superintendent**") and will inform Owner in writing of the Superintendent's name, qualifications, experience and address. Design/Builder shall also provide Owner with the names, qualifications, experience and addresses of all persons who will assist the Superintendent. The Superintendent will be present at the Job Site at all times in which Work is actually in progress and will have complete authority to represent and act for Design/Builder. Superintendent shall supervise and direct the Work and shall not physically participate in the actual performance, assemblage or installation of the

Work. All directions given to Superintendent by Owner shall be as binding on the Design/Builder as if they were given directly to Design/Builder. If Design/Builder's Superintendent or any of his assistants are or become unacceptable to Owner then the Superintendent or the unacceptable assistants shall be promptly replaced upon request by Owner. The Superintendent, as approved by Owner, shall be appointed until completion of the Work and shall not be removed from the Project without the written consent of Owner.

16. **Time of the Essence.** Time is of the essence. Contractor and the Architect shall coordinate their Work as may be directed by Owner according to the accepted Schedule.

17. **Furnishing and Ownership of Documents.**

A. **Copies of Drawings and Specifications.** Contractor will be furnished a sufficient number of reproducible construction Drawings and Specifications, either separately or in the form of a Project Manual. The Contractor shall be responsible for distribution of documents to its subcontractors and suppliers involved with the Work in a timely manner to maintain the progress of the Work in accordance with the accepted Schedule.

B. **Property of Owner.** Drawings and specifications furnished by Design/Builder are the property of Owner and shall not be used by Contractor on other work.

C. **Forms.** Design/Builder will furnish, in electronic media, one set of forms as identified in the Contract Documents for parties with whom it has directly contracted. Contractor will not modify Design/Builder forms, but rather will input the relevant information onto the forms and thereafter use them for their intended purpose on the Project. Said forms are Owner's property and shall not be used by Contractor on other work.

D. **Requirements Provided by Owner.** Owner will furnish Design/Builder with complete information with respect to the requirements of the Project, including a program setting forth Owner's objectives and criteria, including space requirements, configuration and relationships, flexibility, expandability, special equipment, systems and site. Owner will furnish Design/Builder the following items, at Owner's expense:

- (1) structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law;

E. Requirements Provided by Design/Builder.

- (2) surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the Job Site; and

- (3) geotechnical reports and tests including, but not limited to, test borings, test pits, determination of soil bearing values, percolation tests with reports and reports on other subsurface conditions, and appropriate professional recommendations.

18. Invoicing and Payment.

- A. Payment.** The Contractor's cost-to-date of labor and materials incorporated into the Work shall be paid monthly as the Work progresses less retainage of ten percent (10%), which shall be withheld and paid, without interest, upon Final Completion. All such payments shall be made no later than the 30th day of the month following the month in which the Payment Application is received. Owner, at its option and in its sole discretion, may reduce retention to one hundred fifty percent (150%) of the estimated cost to complete or correct the punch list items that are required to be completed or corrected prior to Substantial Completion and/or Final Completion.
- B. Schedule of Values.** Before the first application for payment, Contractor shall submit for Owner's approval a Schedule of Values allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This Schedule of Values supplied shall be used as a basis for Contractor's application for payment as a method of showing progress on the Project; however, Owner acknowledges that the amounts reflected on the Schedule of Values for specific items is not a representation or agreement by the Contractor as to the maximum cost of any one item.
- C. Payment Applications.** Contractor shall invoice Owner monthly in duplicate for Work completed and for materials stored on the site through the last day of the month on Owner's Contractor Progress Payment Request form. Each application for payment shall be due on or before the last day of each month. Each application shall be based on ninety percent (90%) of the labor and materials incorporated into the Work and of materials suitably stored at the site thereof up to at least the last day of the month, less the aggregates of previous payments, and shall be accompanied by a form of an executed Progress Payment Release-Unconditional.
- D. Unconditional Progress Payment Releases.** Contractor's initial application for payment shall consist solely of the Progress Payment Request. Subsequent applications shall be accompanied by a properly executed Unconditional Progress Payment Release forms executed by all its subcontractors, material suppliers or potential lienors. All Unconditional Progress Payment Releases for this Project shall be consistent in form and wording and shall be in the form agreed to by Owner and Contractor.

- E. Payment Including Change Order.** If a progress payment is to include payment for a Change Order, as that term is defined herein, a copy of the cover sheet of the fully executed Change Order shall accompany the Progress Payment Request.
- F. Contractor's Affidavit.** When and if requested by Owner, Contractor shall furnish as a prerequisite to any progress payment and Final Payment, a Contractor's Affidavit reciting that all outstanding bills of labor, materials or services then due, up to the date of the current application for payment, have been paid. The Contractor's Affidavit shall be consistent in form and wording as agreed to by Owner and Contractor.
- G. Payment to Third Parties.** Owner reserves the right, without obligation, to withhold, reduce or recover payment if the Contractor fails to pay any third party for labor, materials or other costs incurred by the Contractor in performance of the Work as and when due. Additionally, Owner shall also have the right, but no obligation, to make joint checks or withhold and or to require satisfactory lien releases for all suppliers and subcontractors of Contractor.
- H. Payment for Materials Stored On Site.** Payment, subject to retention for materials and/or equipment suitably stored at the site and intended for incorporation in the Work will be made by Owner, subject to the following conditions:
- (1) Contractor shall furnish to Owner satisfactory evidence that such materials have been properly received, inventoried and stored at the site in accordance with applicable manufacturer's recommendations and special requirements of Owner;
 - (2) Payment shall be conditioned upon submission by Contractor of bills of sale or such other documentation as will evidence the transfer to title to such materials or equipment to Owner upon payment;
 - (3) Risk of loss of any materials stored on or adjacent to the Job Site shall remain the obligation of the Contractor until such time as title has passed to Owner. Notwithstanding anything contained in this provision, the primary source of recovery for any loss shall be the Builders Risk insurance; and
 - (4) Payment will not be made for materials stored offsite unless authorized in writing by Owner.
- I. Certificate for Payment.** Owner will, within thirty (30) days after the receipt of Contractor's Progress Payment Request, make payment or notify Contractor of Owner reason for withholding the Request, or portions of the Request. Receipt by Owner is defined to be delivery in person to Owner's Director at the Director's office located at 1102-B North 193rd East Avenue, Catoosa, Oklahoma 74015-

0515. Payment is defined to be by Owner's mailing by first-class U. S. Mail a check for the amount of the Request for payment, subject to retention and adjustment as provided in the Contract Documents. If the pay date occurs on a Saturday, Sunday or holiday, Owner will make payment on the next business day. Contractor's Progress Payment Requests are to be dated the last day of the month as defined in other provisions of the Contract Documents.

J. Decisions to Withhold Payment. Owner may decline to make payment because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of any Progress Payment Request previously received and/or withhold payment to such extent as may be necessary to protect Owner for loss because of:

- (1) defective Work not remedied;
- (2) third party claims filed or reasonable evidence indicating the probable filing of such claims;
- (3) failure of Contractor to make payments properly to suppliers or subcontractors or for labor, materials or equipment;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (5) damage to Owner or another contractor or property of another;
- (6) reasonable evidence that the Work will not be completed within the time permitted for completion of the Project;
- (7) failure to carry out the Work in accordance with the Contract Documents;
or
- (8) materially inaccurate or incomplete information provided with the Certificate of Payment.

K. Final Payment.

- (1) Contractor shall submit application for Final Payment. Final Payment and retention shall not become due until Contractor submits to Owner (a) a Contractor's Affidavit acceptable to Owner that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or its property or its sureties might in any way be responsible, have been paid or otherwise satisfied, (b) consent of surety, if any, to Final Payment, and (c) if required by Owner, other data establishing payment or satisfaction of all such obligations, such as

receipts, releases and waivers of lien arising out the Contract, to the extent and in such form as may be designated by Owner.

- (2) If any of Contractor's subcontractors or suppliers refuses to furnish a release or waiver required by Owner, Contractor may furnish a bond satisfactory to Owner to indemnify it against any such lien. If any lien remains unsatisfied after all payments are made, Contractor shall refund to Owner all monies that the latter may be compelled to pay in discharging such lien.
- (3) Final Payment shall constitute a waiver of Claims by Owner except those arising from: (a) liens, claims, or security interest encumbrances arising out of the Contract; (b) failure of the Work to comply with the requirements of the Contract Documents; or (c) terms of warranties required by the Contract Documents.
- (4) Acceptance of Final Payment by the Contractor shall constitute waiver of any known claims, except those previously made in writing and identified as unsettled at the time of final Application for Payment. Final Payment (including retention) will be due no later than sixty (60) days after completion of the Work in accordance with the Contract Documents. Final Payment shall include payment of any conditional items to which Contractor may be entitled as part of its Contract Price, including amounts earned by completion of the Project.
- (5) Any billings received later than sixty (60) days after Final Completion will not be processed. Failure to cause billings to be received by Owner within sixty (60) days of Final Completion is agreed to be conclusive proof of a failure to mitigate damages and shall be a complete defense to the recovery of any damages associated with said billings and said defense shall apply to any theory of recovery, whether legal or equitable, in contract or tort, and including fraud, breach of contract, promissory estoppel or quantum meruit. Payment to a Contractor shall not operate as approval or acceptance of Work done or materials furnished under the Contract Documents. In the event that any of those items identified on the Punch List remain undone or uncorrected within forty-five (45) days of Substantial Completion then Owner may, after written notice, cause any of the items to be completed or corrected and back charge the Contractor for the actual cost incurred by Owner.

19. **Completion.**

- A. **Substantial Completion.** Substantial Completion is defined as the stage in the progress of the Work when the Project or a designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the

constructed facilities are suitable and capable of being operated for their intended use, and Contractor, if applicable, has received a final Certificate of Occupancy. If, however, the constructed facilities are not occupied or used for their intended use for reasons not due to the construction set forth in this Contract, Substantial Completion is still met. Owner may occupy or use any completed or partially completed portion of the Work at any state acceptable to Owner and allowed by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion has reached the Substantial Completion stage. Before Substantial Completion, among other things, construction signage, temporary fencing, office trailers, storage trailers and temporary utilities shall be removed. Contractor's traffic control measures shall be eliminated and removed, if safe to do so. Contractor's insurance obligations shall remain in force and effect until Final Completion; however, upon occupancy of the constructed facilities, the existence of the Builder's Risk Insurance shall be governed by the terms of the Builder's Risk policy and Owner agrees to provide its own all risk property insurance to cover risk of loss upon occupancy.

- B. Right to Occupy before Substantial Completion.** Owner retains the right to occupy or to use any completed or partially completed portion of the Work at any stage acceptable to Owner and Contractor and allowed by public authority having jurisdiction over the Work. Such partial occupancy or use may commence whether or not that portion is complete for Substantial Completion. Partial use or occupancy shall not constitute acceptance of the Work.
- C. Inspections by the Contractor and Punch List.** Upon the date for Substantial Completion as set forth in the Contract, Design/Builder shall prepare and submit to Owner a punch list of items to be completed or corrected. Design/Builder shall then have thirty (30) days following the date for Substantial Completion to complete or correct the items on the punch list, unless such additional time is provided in writing by Owner to complete such items. Failure to include an item on the punch list does not relieve Design/Builder of the obligation to perform the Work in accordance with the Contract Documents.
- D. Inspections by Owner and Punch List.** Within twenty (20) days following receipt of Design/Builder's punch list, the Architect, the Owner and his designees will make an inspection of the Project to determine whether the Design/Builder's Work is substantially complete. If Owner's inspection discloses any item, whether or not included on the Design/Builder's punch list, which is not in accordance with the requirements of the Contract Documents, Design/Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item within thirty (30) days following notification by Owner. Within two (2) days thereafter, Design/Builder shall then submit a request for another inspection by the Architect, Owner and his designees to determine Substantial Completion. Such subsequent inspection will be completed within five (5) days following such notification by Design/Builder. Design/Builder is not relieved

from completing or correcting Work by Owner's failure to inspect the Work within the time frame provided for herein.

- E. **Certificate of Substantial Completion.** When the Work or a designated portion thereof is substantially completed, the Architect will, within five (5) days thereafter, prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion, the responsibilities of Owner and Design/Builder for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which Design/Builder shall finish all items on the punch list accompanying the Certificate, which time shall not exceed ten (10) days without the written consent of Owner. Completion of the above punch list items shall not affect the date of Substantial Completion.
- F. **Owner's Receipt of Fixtures and Equipment.** Design/Builder understands, and shall take into consideration, that sixty (60) days prior to the date for Substantial Completion, Owner may begin receiving fixtures and equipment to be stored in the facilities, and that Owner and Owner's separate contractor(s) may be installing fixtures and Owner's furnished equipment or other equipment immediately thereafter.
- G. **Exterior Closed and Locked.** At least sixty (60) days prior to Design/Builder's scheduled date for Substantial Completion, all exterior openings shall be closed in, if required, exterior doors provided with locks, and the entire building sufficiently secure to protect Owner fixtures.
- H. **Final Completion.** Upon receipt of written notice from Design/Builder that the Work is ready for final inspection and acceptance and upon receipt of a final application for payment, the Architect, Owner and his designees will promptly make such inspections and, when they find the Work acceptable under the Contract Documents and the Contract fully performed, they will issue a Certificate of Final Acceptance and thereafter will approve Final Payment.

20. **Construction by Owner or by Special Subcontractors.**

- A. **Owner's Right to Perform Construction and to Award Separate Contracts.** Owner reserves the right to perform construction related to the Project and to award separate contracts in connection with other portions of the Project (hereinafter referred to as "**Special Subcontractors**"). Owner shall provide for coordination of the activities of Owner's own employees and of each of the Special Subcontractors with the Work of the Contractor. The Contractor shall participate with each Special Subcontractor and Owner in reviewing their respective construction schedules when directed to do so by Owner. The Contractor shall make any revisions to the Schedule and the Contract Price after a joint review and mutual agreement between Owner and Contractor.

- B. Mutual Responsibility.** The Contractor shall afford Owner or the Special Contractors the opportunity for introduction and storage of their materials and equipment and performance of their activities and shall coordinate Contractor's construction and operations with Owner or the Special Subcontractors. If part of the Contractor's Work depends upon construction by Owner or the Special Subcontractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to Owner that such construction by Owner or the Special Subcontractors is required in order to give Owner adequate time to coordinate such construction. Costs caused by delays or by improperly timed activities shall be borne by the party responsible therefore.

21. Subcontractors and Suppliers.

- A. Subcontractual Relations.** By appropriate agreement, written where legally required for validity, the Contractor shall require each of its contractors or subcontractors, to the extent of the Work to be performed by its contractors or subcontractors, to be bound to the Contractor by terms of the Contract Documents and the Cherokee Nation Property Management Standard Construction Terms and Conditions, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Conditions, assumes toward Owner. Each subcontract agreement shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the contractor or subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each contractor or subcontractor to enter into similar agreements with sub-subcontractors. The Contractor shall make available to each proposed contractor or subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the contractor or subcontractor will be bound, and, upon written request of the contractor or subcontractor identify to the contractor or subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Contractors or subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

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

- (1) Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Owner the names of persons or entities proposed for each principal portion of the Work. Owner will promptly reply to the Contractor in writing stating whether or not Owner, after due investigation, has reasonable objection to any such proposed person or entity.
- (2) The Contractor shall not contract with a proposed person or entity to which Owner has made reasonable and timely objection.

- (3) If Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom Owner has no reasonable objection.
- (4) In the awarding of subcontracts and the performance of these Contract Documents, Owner and Contractor and its subcontractor(s) shall, to the greatest extent feasible, give preference to Indian organizations, Indian owned enterprises and individuals as certified by the Cherokee Nation Tribal Enforcement Rights Office (“TERO”).

C. Contractor’s Subcontracts. Contractor shall not subcontract any part of the Work except as specifically provided in the Contract Documents or as Owner, in its sole discretion, agrees to in writing. If applicable, Contractor will evaluate bids from subcontractors and suppliers and present tabulation of bids and qualifications. As a condition to commencing Work, Contractor shall submit, in writing, a list of all subcontractors and suppliers to be used in connection with the Work and shall within a reasonable time thereafter supply subcontractor’s signed contracts and vendor purchase orders to Owner. Contractor shall immediately notify Owner, in writing, of any change in their subcontractors and suppliers. Contractor shall have each subcontractor and supplier complete the Progress Payment forms and attach them to its monthly Progress Payment Requests. Failure to comply with this provision will delay processing of monthly progress payments. For purposes of this Section, identified subcontractors and suppliers shall mean all subcontractors and those suppliers whose total price(s) exceeds five percent (5%) of the Contract Price.

D. Certificates of Insurance. Contractor shall provide Owner with acceptable certificates of policies of insurance for all contractors and subcontractors.

E. Contingent Assignment of Subcontracts. Each subcontract agreement for a portion of the Work is assigned by the Contractor to Owner provided that:

- (1) Assignment is effective only after termination of the Contract by Owner for cause or for convenience and only for those subcontract agreements which Owner accepts by notifying the contractor or subcontractor in writing; and
- (2) Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

22. Insurance.

A. Contractor’s Liability Insurance. Contractor will carry or cause to be carried and maintained in force throughout the entire term of this Contract insurance coverage as described below with insurance companies acceptable to Cherokee Nations Enterprises. The limits set forth below are minimum limits and will not be construed to limit Contractor’s liability. Except as provided for in the

Contract, all costs and deductible amounts will be the sole responsibility of Contractor.

- (1) Worker's Compensation. Worker's Compensation insurance complying with the laws of the state or states having jurisdiction over each employee, whether or not Contractor is required by such laws to maintain such insurance, and Employer's Liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee and \$500,000 disease policy limit.
- (2) General Liabilities. Commercial or Comprehensive General Liability insurance on an occurrence form with a combined single limit of \$1,000,000 each occurrence, and annual aggregates of \$1,000,000, for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations, and when applicable the explosion, collapse and underground exclusion will be deleted.
- (3) Automobile. Automobile liability insurance with a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage to include coverage for all owned, non-owned and hired vehicles.

- B. Thirty (30) Day Notice Clause.** As a condition precedent to the modification or cancellation of the policy or policies issued by the insuring company during the periods of coverage as stated herein, thirty (30) days' prior written notice of such cancellation shall be mailed to Owner.
- C. Subrogation.** In each of the above-described policies, Contractor agrees to waive and will require its insurers to waive any rights of subrogation or recovery they may have against Owner, its parent, subsidiary, or affiliated companies.
- D. Additional Insured.** Under the General Liability and Automobile insurance policies, Owner, its parent, subsidiary and affiliated companies will be named as additional insureds as respects Contractor's operations and as respects any services performed under this Contract. Any costs associated with naming these additional insureds will be handled as a reimbursable expense. The General Liability and Automobile insurance policies will include the following "other insurance" amendment: "This insurance is primary insurance with respect to Owner, its parent, subsidiary and affiliated companies, and any other insurance maintained by Owner, its parent, subsidiary or affiliated companies is excess and not contributory with this insurance."
- E. Non-Renewal or Cancellation.** Non-renewal or cancellation of the policies described above will be effective only after written notice is received by Owner from the insurance company thirty (30) days in advance of any such non-renewal

or cancellation. Prior to commencing the Work hereunder, Contractor will deliver to Owner certificates of insurance on an ACORD 25 or 25S form evidencing the existence of the insurance coverage required above. In the event of a loss or claim arising out of or in connection with the Work performed under this Contract, Contractor agrees, upon request of Owner, to submit the original or a certified copy of its insurance policies for inspection by Owner.

- F. Non-Liability for Contractor's Loss.** Except for builders risk insurance required under the Contract Documents, Owner will not insure nor be responsible for any loss or damage, regardless of cause, to property of any kind, including loss of use thereof, owned, leased or borrowed by the Contractor, or his employees, servants or agents.
- G. Other Risks.** If Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.
- H. Insurance Companies to be Licensed.** All insurance to be provided by Contractor shall be written by insurance companies licensed to do business in the State of Oklahoma.
- 23. Contractor's Bond.** If required by Owner, Contractor shall furnish performance and a labor and material payment bond in the amount of the Contract Price. At Owner's request, Contractor shall disclose its cost (stated both as a percentage of Contract Price, and an estimated total cost) for said bonds. The bonds shall name Owner as obligee and shall be in the form or forms as agreed upon by Owner and Contractor. The cost of the bond is included in the Contract Price.
- 24. Safety Regulations and Safety of Persons and Property.**
- A. Safety Plan.** Contractor shall supply a safety plan approved in writing by Owner.
- B. Safety Representations.** Contractor, its agents, employees, supplier and subcontractors shall perform all Work in a safe and responsible manner and shall comply with all applicable safety laws and regulations promulgated by any Federal, State or Local government authority and regulations and all other safety rules and regulations related to such Work promulgated by any governmental agency in the jurisdiction the Work is located.
- C. Protective Equipment.** During all Work performed hereunder, Contractor shall provide and enforce the use of suitable safety barriers and provide employees, agents, subcontractors, etc., with appropriate personal protective equipment where required (e.g., hard hat, hand, eye, foot and respiratory protection). Such personal protective equipment shall be worn by all persons during their presence in posted areas.

- D. **Right to Know.** Contractor's employees present at Owner Job Site shall be provided copies of Material Safety Data Sheets used on site for all toxic substances to which Contractor's employees may be routinely exposed. Contractor shall provide Owner with Material Safety Data Sheets for any chemical substance used by Contractor on the Job Site.
- E. **Drug Testing.** Contractor, subcontractor and supplier's employees may be subject to pre-employment and/or random drug testing.
25. **Cooperation With Other Contractors.** Contractor shall cooperate and coordinate its Work with other contractors employed by Owner in order to insure that the Work of each shall be commenced and completed without delay.
26. **Representations and Warranties.**
- A. **General Representations and Warranties.** Contractor represents and warrants to Owner that:
- (1) all materials delivered hereunder are new and free from defects in material and workmanship;
 - (2) Contractor has good title to the material and has or shall convey such good title to Owner;
 - (3) the material purchased or provided hereunder shall conform to the Contract Documents, including all applicable specifications, drawings, samples, or other descriptions provided by Owner;
 - (4) the material purchased or provided hereunder will be suitable for the purposes intended under the Contract Documents;
 - (5) Contractor and its subcontractors have the requisite skill, experience, expertise, financial resources, and capability to perform properly and timely the Work as required by the Contract Documents;
 - (6) Contractor will provide and perform the Work in strict compliance with the Contract Documents, manufacturers' printed directions, and all applicable law; and
 - (7) Contractor and its subcontractors will perform the Work utilizing the skill and attention of experienced and competent contractors involved in the business of completing the Work and shall conduct the Work in a prudent, safe, and careful manner consistent with Owner interests.
- B. **Warranty Exclusions.** The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Constructor,

improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

- C. **Warranty Period.** Such Representations and Warranties shall commence on the date of Substantial Completion and shall extend for a period one (1) year thereafter or such longer period as may be prescribed in the Contract Documents, or by law. Work not conforming to these standards will be considered defective. Any Work replaced or repaired pursuant to such warranty shall be further warranted for one (1) year after the completion of such repair or replacement. If any of the Work is defective in materials or workmanship, or is otherwise not in conformity with the requirements of the Contract Documents, Contractor shall promptly correct or replace such defect or nonconformity at Contractor's sole cost and expense and at a time or times convenient to Owner and shall be liable for any damage to other work or property caused by such defects. After ten (10) days' written notice to Contractor of its intent to do so, Owner may correct such defects and back charge Contractor for the actual cost of correcting the defect or nonconformity. Contractor's warranty shall include all labor, materials, shipping costs, and other associated costs regardless of the manufacturer's limited warranty, and shall be nonexclusive of other warranties or remedies available to Owner.
- D. **Named Products.** Where products named in the specifications are accompanied by the term "or equal," or other language of similar effect, the products shall comply with those Contract Document provisions concerning substitutions for obtaining Owner approval (or Change Order) to provide an unnamed product.
- E. **Other Specified Products.** Whenever any product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer trade names or similar reference, the Contractor obligates himself to the use of the product and no substitutes or equals shall be allowed. Where two or more products are shown or specified, the Contractor has the option of which to use.
- F. **Warranty on Substantial Completion.** The warranties stated in this Contract commence on the date of Substantial Completion and shall survive any inspection, delivery, acceptance, payment, expiration, or earlier termination of this Contract and such warranties shall run to Owner and its successors and assigns. Neither written acceptance by Owner nor payment to Contractor shall release Contractor from its responsibility or liability for defective Work or for failure to comply with the warranties set forth herein.
- G. **Third Party Suppliers Warranty.** Contractor shall obtain from third party suppliers and manufacturers the required extensive warranties and guarantees for equipment and materials and shall assign, and hereby assign the same to Owner. Contractor shall cooperate with Owner in the enforcement of such warranties and, if so requested by Owner, assist in obtaining proper servicing, repair, or

replacement from each manufacturer under the provisions of the warranties. Contractor shall furnish Owner with a complete list of such third party suppliers and manufacturers, together with a copy of complete warranties from such suppliers and manufacturers on or before Final Completion of the Work hereunder.

27. **Liens.** Contractor shall have the affirmative duty to keep Owner property free from mechanic and materialmen's liens of any person or entity supplying any portion or the Work and shall not permit any such lien to be filed or maintained in connection with the Work. Owner may recoup, offset or retain out of payments due or to become due to Contractor an amount sufficient to fully protect Owner from any such lien, claim of lien, or claim against bond. This clause shall be inserted in all of Contractor's purchase orders and subcontract agreements. Contractor further agrees to defend (including attorney fees), indemnify and hold harmless Owner from any and all loss of use as a result of any lien filed upon the property of Owner unless the lien is due to the failure of Owner to pay a valid request for payment.
28. **Inspection and Correction of Work.** All Work shall be subject to inspection by Owner and/or the Architect at all reasonable times and at all places. Any such inspections are for the sole benefit of Owner and shall not relieve the Contractor of the responsibility for providing quality control measures to assure that the Work strictly complies with the Contract Documents. No inspection by Owner or its Representatives shall be construed as constituting or implying either a waiver or acceptance. Inspections shall not relieve Contractor of responsibility for damage to or loss of material prior to acceptance, nor in any way affect the continuing rights of Owner after acceptance of the completed Work.
29. **Interference, Clean-up, Defective Work, Inspection of Facilities, and Cutting and Patching.**
- A. **Interference.** Owner or its Representatives shall, at all times, have access to the Work. Contractor shall perform all Work without interference or interruption to Owner and other persons completing other work at the Job Site, and Owner and its representatives shall perform inspections and site visits without interference or interruption of others performing Work at the Job Site. Contractor shall fully cooperate and coordinate its Work with such other persons or entities. Contractor, before proceeding with the Work, will accurately check and verify all previous and surrounding work done by others, if any, and shall determine the correctness of the same.
- B. **Cleaning Up.** Contractor shall at all times avoid creating dust, fumes, vibration, contamination and excess noise. If dust, fumes, vibration, contamination, or excess noise are unavoidable, Contractor shall give prior written notice of such fact to Owner, and Contractor shall proceed with such Work only upon Owner written authorization. Contractor shall maintain the Job Site in a safe, clean condition free from accumulations of waste material or rubbish on a daily basis.

- C. **Owner's Right to Clean Up.** If a dispute arises among the Contractor, separate contractors and Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waster materials and rubbish, Owner may, after five (5) days' written notice, clean up and allocate the cost among those responsible.
- D. **Correction of Defective Work.** Contractor shall, without charge, replace any material or correct any workmanship which does not conform to the Work to be provided by the Contractor under the Contract Documents. Contractor shall promptly segregate and remove rejected material from the Job Site. Contractor shall bear all cost of damages to the property of Owner or the property of any other contractor in the removal or replacement of defective or nonconforming Work; however, Contractor shall retain the right to seek the cost and related expenses from any subcontractor or suppliers providing defective or nonconforming work.
- E. **Remedies for Failure to Cure Defective Work.** If the material and/or workmanship are not in accordance with the Contract Documents and Contractor does not promptly replace rejected material or correct rejected workmanship, Owner may, after five (5) days' written notice:
- (1) by contract or otherwise, replace such material or correct such workmanship and back charge to Contractor the cost thereof together with any resulting damage;
 - (2) terminate the Contractor's right to proceed under Termination for Cause; or
 - (3) issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- F. **Inspection Facilities and Cost.** Contractor shall promptly furnish, as part of the Work, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection as may be required by the Contract Documents. All inspections by Owner and its Representatives shall be performed to the extent feasible in such manner as to not unnecessarily delay the Work. The Contractor shall pay any additional cost, including, but not limited to, additional fees of inspection when material or workmanship is not ready at the time specified by the Contractor for inspection or when reinspection is necessitated by prior rejection.
- G. **Cutting and Patching.** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or make its parts fit together properly. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Project by Owner or Special Subcontractors by cutting, patching or otherwise altering such construction or by excavation.

H. Non-waiver. The cost of testing all defects or non-complying Work shall be paid by the Contractor if the Work is found to be defective or nonconforming. The inspection or the occupancy or acceptance of Work, shall not waive or impair Owner right to reject or revoke its acceptance of nonconforming Work, or to avail itself of any other remedies.

30. Hazardous Materials.

A. Hazardous Materials Brought on or Produced on the Site. Except to the extent required by the Contract Documents, Contractor shall not introduce, use or otherwise cause the presence of Hazardous Materials of any kind at the location of the Project. Notwithstanding the foregoing, Contractor shall be responsible for any and all Hazardous Materials brought on to the Job Site or produced by Contractor at the Job Site. For purposes here, "**Hazardous Materials**" means any substance which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful and will cause injury or death. Contractor shall comply with all laws, regulations and procedures regarding Hazardous Materials. Contractor shall immediately notify Owner of any Hazardous Materials present at the Job Site. Contractor's employees present at the Job Site shall be provided with copies of Material Safety Data Sheets used on the Job Site for all Hazardous Materials that Contractor's employees may be exposed to. Contractor shall provide Owner with Material Safety Data Sheets for any Hazardous Materials it uses on the Job Site. Contractor is responsible for the disposal of all Hazardous Materials it or its subcontractor(s) bring onto or produce at the Job Site. Contractor agrees that all such dispositions shall be made under the rules and regulations of the U. S. Environmental Protection Agency and any state or local agencies or entities performing similar functions. Contractor shall not dispose of any Hazardous Materials on the Job Site or on any of Owner property.

B. Hazardous Materials Found on the Site. In the event Contractor encounters material reasonable believed to be asbestos, polychlorinated biphenyl ("**PCB**") or any other Hazardous Material that has not been rendered harmless, Contractor shall immediately stop Work in the area affected and promptly report the condition to Owner by telephone and in writing. Contractor shall use its best effort to continue Work in other areas of the Project so as to not delay completion of the Project. Owner and its Representatives shall take such steps as may be reasonable to verify the present or absence of Hazardous Material or substance and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Owner shall employ such consultants and experts as may be deemed appropriate to perform tests and render lawfully contain, remediate or deal with such materials.

31. Taxes. The Contract Price includes, and the Contractor shall be solely responsible for paying, all taxes, excises, duties and assessments arising out of the Contractor's

performance of the Work in any manner levied, assessed or imposed by a government or agency having jurisdiction. Owner represents that it is a wholly-owned, tribally chartered corporation that does business for the benefit of the Cherokee Nation, and enjoys the tax-exempt status of the Cherokee Nation. As such, Contractor and any subcontractor agree, where appropriate and at the sole option of Owner to permit Owner to purchase goods and materials utilized in the performance of this Contract on a tax-exempt basis and pass those savings on to Owner for the benefit of the Cherokee Nation.

32. **Compliance with Laws.** Contractor shall strictly observe, comply with, and give all notices required by, all local, municipal, state, tribal and federal laws, ordinances, rules, directives, orders, and regulations related to the Work. All work that is in addition to the Work specifically required by this Contract, but necessary to fully comply with such Laws, shall be deemed part of the Work. Contractor will keep and have available all necessary records and make all payments, reports, collections, and deductions, and otherwise do any and all things so as to comply fully with all such laws, including, but not limited to:

- (a) the production, purchase and sale, furnishing and delivering, pricing and use or consumption of materials, supplies, and equipment;
- (b) the hire, tenure, or conditions of employment of employees and their hours of work and rates and payment of their wages; and
- (c) the keeping of records, making of reports, and the payment collection, and deduction of federal, state, and municipal taxes and contributions, all so as to fully relieve Owner from and protect it against any and all responsibility or liability therefor or in regard thereto.

33. **Changes in the Work; Change Orders.**

A. **Changes in the Work.** All changes in the Work must be in writing. Owner may, at any time, by written Change Order or written Construction Change Directive, make changes in, additions to, and omissions from the Work. Contractor shall promptly proceed with the Work as so changed by the Change Order.

B. **Change Order.** A Change Order is a written instrument prepared by Owner or the Architect at Owner's direction and signed by Owner, the Architect and Contractor stating their agreement upon all of the following:

- (1) change in the Work;
- (2) the amount of the adjustment, if any, in the Contract Price; and
- (3) the extent of the adjustment, if any, in the time for Substantial Completion.

- C. Construction Change Directives.** A Construction Change Directive is a written order prepared by the Architect or Owner, directing a change in the Work prior to agreement and adjustment, if any, in the Contract Price or time for Substantial Completion or both. Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of this Contract; the Contract Price and time for Substantial Completion being adjusted accordingly. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- D. Adjustment to Contract Price.** If the Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:
- (1) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - (2) unit prices stated in the Contract Documents or subsequently agreed upon; or
 - (3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.
- E. Information Required.** Upon Receipt of a Construction Change Directive, the following information shall be provided by the Contractor for review by Owner and the Architect upon receipt of a Construction Change Directive.
- (1) The separate costs between building, site and equipment as noted on the Schedule of Values.
 - (2) Complete backup on all costs including but not limited to:
 - (a) Subcontractors or employee time records;
 - (b) Material invoices or purchase orders;
 - (c) Rental receipts for specialized equipment or tools;
 - (d) Time relationships to progress of work for delay of Project; and/or
 - (e) Validity of quantity of work and requested price (i.e. cost per square foot, gallons of material, etc.).
 - (3) Backup for reason or basis of Construction Change Directive.
 - (a) Not shown on documents;
 - (b) Requested by Owner and/or the Architect;

- (c) Local jurisdictional requirements; and/or
 - (d) Material or item is no longer made.
- (4) Initiation date and any limitations on time that will affect the amount of the Construction Change Directive. Complete package shall be submitted to Owner with a copy to the Architect.
- F. Contractor to Proceed with the Work.** Upon receipt of a Construction Change Directive the Contractor shall promptly proceed with the change in the Work involved and inform Owner and the Architect in writing of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or time for Substantial Completion.
- G. Failure to Agree.** If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Price, the method and the adjustment shall be initially determined by Owner and/or the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Price, an allowance for overhead and profit in accordance with the schedule set forth below:
- (1) costs of labor;
 - (2) costs of materials, supplies and equipment, including cost of transportation;
 - (3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
 - (4) costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
 - (5) overhead and profit as used herein to include supervision, superintendence, wages of timekeepers, wages of watchmen and clerks, hand tools, incidentals, general office expense, and all other expenses not included in "cost" above; and
 - (6) any other cost which would have been included as part of the Cost of the Work as set forth in the Construction Management Agreement between Owner and Construction Manager as it pertains to this Project.
- H. Contract Price Decrease.** The amount of credit to be allowed by the Contractor to Owner for a deletion or changed which results in a net decreased in the Contract Price shall be actual net cost as confirmed by Owner. When both additions and credits covering related Work or substitutions are involved in a

change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

- I. Pending Final Determination of Total Cost.** Pending final determination of the total cost of a Construction Change Directive to Owner, amounts not in dispute for such changes in the Work shall be included in applications for payment accompanied by a Changer Order indicating the parties' agreement with part or all of such costs.
- J. Agreement Between Contractor and Owner.** When Owner and Contractor agree as to the adjustments in the Contract Price and time for Substantial Completion, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.
- K. Claim for Additional Costs and/or Time.** In any instance in which Owner has issued a Construction Change Directive, or in which Contractor for any reason believes he is entitled to additional cost or compensation, Contractor shall, within twenty-one (21) days after issuance of a Construction Change Directive, submit such claim for additional compensation in the form of a Proposal Request. If all information is not available within twenty-one (21) days after a Contractor has incurred a substantial portion of the costs involved in the change, Contractor shall submit a Proposal Request outlining costs then available to the Contractor within such twenty-one (21) days. If information available to Contractor is not submitted within twenty-one (21), the claim shall be deemed to be waived by Contractor.
- 34. Term.** This Contract shall commence on the date it is executed by both parties and shall continue in effect until the Work contemplated thereto has been performed and all payments received, unless sooner terminated, with or without cause, at Owner's sole discretion. If Contractor has commenced performance of any Work before the execution of this Contract, this Contract shall be effective retroactively to the date the Work was first performed.
- 35. Stop Work.** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required herein or fails to carry out Work in accordance with the Contract Documents, Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required in this Contract.
- 36. 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 to commence and continue correction of such default or neglect with diligence and promptness, Owner may, after five (5) days' written notice, without prejudice to any other remedies it may

have, either correct such deficiencies or terminate this Contract in whole or in part. In such case, Owner may provide written notice to Contractor that it will deduct from payments then or thereafter due the Contractor the reasonable costs of correcting such deficiencies, including Owner expenses and compensation for design professionals, as well as all additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner within ten (10) days following written demand for such payment. Any such unpaid amounts due under this Section shall bear interest at the prime rate of interest as set by the Bank of Oklahoma plus two (2) percentage points.

- 37. Termination for Cause.** If Contractor neglects to proceed properly with the Work or fails to perform the Work, then Owner after five (5) days' written notice to Contractor and his surety, in addition to any other remedy, may (i) make good the deficiencies and deduct the cost thereof from the payment then or thereafter due Contractor, or (ii) terminate this Contract and take possession of all materials, tools, and equipment and finish the Work by such means as may be required. If the unpaid balance of the amounts due to Contractor hereunder exceed the expense of finishing the Work (after completion and cost calculation), Owner shall pay the Contractor the difference, but if such cost of the Work exceeds the unpaid balance, Contractor shall immediately pay Owner the difference within ten (10) days following written demand for such payment. Any such unpaid amounts due under this Section shall bear interest at the prime rate of interest set by the Bank of Oklahoma plus two (2) percentage points per annum until paid. Any termination for cause by Owner that is determined in accordance with the procedures set forth in Subparagraph 43(E) to be wrongful for any reason shall be deemed for all purposes to be a termination for convenience as provided herein.
- 38. Suspension and Termination for Convenience.** Owner may suspend or terminate the Work in whole or in part at any time for its convenience. Such suspension or termination shall be effective by written notice to Contractor stating the extent and effective time of such suspension or termination. Contractor shall continue to perform any part of the Work not so suspended or terminated, if the Work is terminated under this Section. Contractor shall be paid for the Work completed up to the effective date of termination and no more. Owner and Contractor shall execute a Change Order regarding adjustments to the Contract Price, scope of Work, and any other matters affected by such suspension or termination. Upon material breach of Owner obligations hereunder, Contractor may suspend performance if Contractor provides fourteen (14) day's written notice to Owner.
- 39. Title.** Title to all Work completed or in the course of being provided, and title to all material and supplies provided under the Contract Documents, except tools, equipment, and vehicles owned by or rented to Contractor or its Subcontractors, shall pass to Owner immediately after delivery to the Job Site or payment therefore by Owner, whichever occurs first.
- 40. Uncovering and Correction of Work.**

- A. **Uncovering of Work Contrary to Request.** If a portion of the Work is covered contrary to Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and be replaced at the Contractor's expense.
- B. **Uncovering of Work Not Specifically Requested.** If a portion of the Work has been covered which Owner has not specifically requested to observe prior to its being covered, Owner 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 Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs.
- C. **Prompt Correction of Covered Work.** The Contractor shall promptly correct Work rejected by Owner or the Architect 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 Owner and the Architect's services and expenses made necessary thereby.
- D. **Long Term Correction of Covered Work.** If, within one (1) year after the date of Substantial Completion of the Work or designed portion thereof, or after the date for commencement of warranties or by terms of any 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 Owner to do so unless Owner has previously given the Contractor a written acceptance of such condition. This period of one (1) years shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract. Owner shall give such notice promptly after discovery of the condition.
- E. **Removal of Work From the Job Site by Contractor.** 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 Owner.
- F. **Correction of the Work by Owner.** If the Contractor fails to correct nonconforming Work within a reasonable time, Owner may correct such work at the Contractor's expense. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from Owner, 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 (10) days after written notice, Owner may, upon ten (10) additional days after 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 Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Fee 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 Owner.

- G. **Cost of Correcting the Work.** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of 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.
- H. **No Established Limitation.** Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- I. **Acceptance of Nonconforming Work.** If Owner prefers to accept the Work that is not in accordance with the Contract Documents, Owner may do so instead of requiring that the Work be corrected. In this instance, the Contract Price will be equitably reduced by the value of the nonconforming Work as compared to the value of the Work had it been performed in accordance with the Contract Documents. Such adjustment shall be effected whether or not Final Payment has been made.

41. **Tests and Inspections.**

- A. **Compliance With Laws.** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Owner shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals.
- B. **Additional Testing.** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing,

inspection or approval not included hereunder, Owner will make arrangements for such additional testing, inspection or approval.

- C. **Testing Which Reveals Nonconforming Work.** If such procedures for testing, inspection or approval hereunder 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 in accordance with the Owner Standard Construction Terms and Conditions.
- D. **Required Certificates.** Required certificates of testing, inspection or approval shall be secured by the Owner.
- E. **Prompt Testing.** Tests or inspections conducted pursuant to the Contract Document shall be made promptly to avoid unreasonable delay in the Work.

SAMPLE

42. **Claims and Disputes.**

- A. **Claims.** A Claim is a demand or assertion by one of the parties 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 Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice.
- B. **Referral to the Architect.** All Claims, excluding Claims for breach of warranty, but including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided below. A decision by the Architect, which decision shall be made by the Architect within forty-five (45) days of the submission of a Claim, shall be required as a condition precedent to initiating the dispute resolution procedure set forth in Paragraph 43 of a Claim between the Contractor and Owner as to all such matters arising prior to the date Final Payment is due, regardless of (a) whether such matters relate to execution and progress of the Work or (b) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to litigation (or arbitration, depending on the process) in the event (a) the position of Architect is vacant, (b) the Architect has not received evidence or has failed to render a decision within agreed time limits, (c) the Architect has failed to take the required action within thirty (30) days after the Claim is made, (d) forty-five (45) days have passed after the Claim has been referred to the Architect, or (e) the Claim relates to a mechanic’s and materialman’s lien.
- C. **Timing of Making a Claim.** Claims by the Contractor must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. There shall be no limitation on when a Claim may be made by Owner. 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.
- D. **Diligent Performance of the Work Pending a Claim.** Pending final resolution of a Claim in accordance with Paragraph 43, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract.
- E. **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. The Contractor’s Claim shall include an estimate of the proposed increased cost.
- F. **Claims for Additional Time.** If the Contractor wishes to make a Claim for increases in the time to complete the Work, written notice as provided herein shall be given. The Contractor’s Claim shall include an estimate of probably effect of

delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

- G. Notice of a Claim.** 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. The notice shall provide sufficient detail to enable the other party to investigate the matter.

43. Resolution of Claims and Disputes.

- A. Review of Claims by the Architect.** The Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (a) request additional supporting data from the claimant, (b) submit a schedule to the parties indicating when the Architect expects to take action, (c) reject the Claim in whole or in part, stating reasons for rejection, (d) recommend approval of the Claim by the other party, or (e) suggest a compromise.
- B. Documentation of the Resolution of a Claim.** If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.
- C. Additional Information for Unresolved Claims.** If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (a) submit additional supporting data requested by the Architect, (b) modify the initial Claim, or (c) notify the Architect that the initial Claim stands.
- D. Architect's Decision Relating to Unresolved Claims.** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which decision shall be nonbinding on the parties. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim. If there is a surety and there appears to be a possibility of the Contractor's default, the Architect may, but is not obligated to notify the surety and request the surety's assistance in resolving the controversy.
- E. Governing Law, Jurisdiction and Waiver of Venue.** The rights and obligations of the parties to this Contract shall be governed by and construed in accordance with the laws of the Cherokee Nation. Any Claim arising under this Contract that remains unresolved after referral to the Architect, as provided herein, shall be adjudicated in the Courts of the Cherokee Nation sitting in Tahlequah, Oklahoma.

The parties agree that venue shall lie only in such court, and any and all objections to such jurisdiction and venue are hereby waived by Owner, Contractor, and any subcontractors or consultants of Owner and Contractor. All parties agree to be bound by the rulings of the Courts of the Cherokee Nation.

44. Indemnification.

- A. Indemnification-General.** Contractor shall defend (at Owner's option), indemnify and hold harmless Owner, its parent, subsidiaries and affiliates and its and their respective directors, officers, employees, representatives and agents and the Chief and Tribal Council of the Cherokee Nation (collectively referred to as the Cherokee Nation Group) from and against any claim, demand, cause of action, judgment, settlement, penalty, lien, fine, liability, damages, loss or expense, including all expenses of litigation, court costs and attorneys' fees and expenses incurred by the Cherokee Nation Group in any Claim, action or proceeding between the Cherokee Nation Group and Contractor or between the Cherokee Nation Group and any third party arising directly or indirectly from or related in any way to the Work provided under this Contract, including injury to or death of persons (including but not limited to employees, representatives and agents of the Cherokee Nation Group, Contractor, any personnel directly or indirectly employed by Contractor and third parties) or damage to or loss of property (including but not limited to property of the Cherokee Nation Group, Contractor, any personnel directly or indirectly employed by Contractor and third parties), to the extent that claim is caused by the negligence or failure of the Contractor to perform its duties under the Contract Documents. This indemnity, defense and hold harmless provision does not apply to any claim or liability to the extent the Cherokee Nation Group is found to have been solely negligent, pursuant to the procedures set forth in Paragraph 43(E).
- B. Indemnification-Taxes.** Contractor agrees to defend, indemnify, and hold harmless Cherokee Nation Group for the following taxes, contributions, penalties, fees and expenses (including but not limited to attorneys' fees and expenses) incurred by Cherokee Nation Group because of Contractor's failure to withhold federal and state income taxes, FICA taxes, or FETA taxes or any other such taxes or governmental charges, state or federal which Cherokee Nation Group may be required to pay on account of Contractor.
- C. Participation by Cherokee Nation Group.** Any of the Cherokee Nation Group hereto may, at their option and expense, participate in their/its own defense through separate counsel without relieving Contractor of any obligation hereunder.
- D. Patent Infringement.** Contractor shall and does hereby agree to indemnify Cherokee Nation Group and to pay on demand, assume liability for, defend, protect, and hold the Cherokee Nation Group harmless from, against, and in respect of any and all Claims that the Work (or any process or apparatus supplied

by Contractor as a part of the Work) or the use or operation of the Work infringes upon any patent, trade secret, copyright, or application therefor, or any other property right of a third party. If such a claim has been made or is likely to be made, Contractor, at its option and sole expense, may promptly procure the right for Owner to continue using the Work in question or to modify or replace promptly the Work to Owner satisfaction so that it becomes non-infringing. Contractor shall indemnify the Cherokee Nation Group for all costs, damages, attorney fees and expenses that arise or result from any such claim(s). The provisions of this paragraph shall survive the termination of this Contract and the completion of the Work.

45. **Consequential Loss or Damage.** Contractor waives claims against Owner for consequential loss or damage arising out of or relating to the Contract Documents, except for anticipated profit arising directly from the Work. Owner will be liable for any direct damages incurred by the Contractor caused by any breach of the Contract by Owner to the extent that Owner is found liable for any such breach, pursuant to the procedures set forth in Paragraph 43(E).
46. **Patents.** Contractor shall obtain, at its own expense, any license or other authorization for use of any copyright trademark, or patent that would be infringed by carrying out the Work or performing under the Contract Documents.
47. **Work Product.**
- A. **New Work Created.** All new or original Work created hereunder, or all Work obtained or acquired, shall be considered work for hire, and Owner shall own all rights thereto, including, but not limited to, patents and applications therefore, copyrights, trademarks, trade names, mask works, and publication rights. Contractor shall assign all such intellectual property rights and other work product to Owner or its designee. Documents and other written materials provided by Contractor pursuant to this Contract will forever remain Owner or its designee's property.
- B. **Drawings and Specifications.** The drawings, specifications and other documents, including those in electronic form, prepared by Design/Builder are and shall remain Owner property through which the Work is to be executed by the Contractor. Contractor may retain one 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 Owner or Owner's Architect and, unless otherwise indicated, Owner shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of the drawings and specifications, except the Contractor's record set, shall be returned or suitably accounted for to Owner, on request, upon completion of the Work. The drawings, specifications and other documents prepared by Owner and Owner consultants, and copies thereof furnished to the Contractor, are for use solely with respect to

the 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 this project outside the scope of the Work without the specific written consent of Owner.

- C. **As-Built Drawings.** Contractor is to create an “as-built” record set of drawings in accordance with the Contract Documents, noting especially those items of Work that are hidden from view.

48. **Delay.**

- A. **Force Majeure.** If Contractor is prevented from performing any of its obligations under these Contract Documents by reason of fire, flood, windstorm, earthquake, other acts of God, civil disturbance, riots, order of any court or administrative body (not due to the fault of Contractor), or any other cause beyond the control of Contractor and without the fault on the part of Contractor, the time allotted by the Contract Documents for performance of the obligations that are so prevented shall be extended one (1) day for each day of such delay. Contractor shall make no claim for extension of the time for Substantial Completion pursuant to this Section unless it shall notify Owner, in writing, of the existence of any delay excused herein within twenty-four (24) hours after the beginning of such period of delay and of the termination of such period of delay within twenty-four (24) hours after its termination.
- B. **Normal Weather Conditions.** Contractor has incorporated typical weather days as per the Tulsa International Airport FAA average rainfall schedule into the Project Schedule. If there are additional weather days greater than those provided for in the Schedule, the Contractor may get the additional days above the average as an extension to the Substantial Completion date. No time for weather delays will be charged for days on which the Contractor is capable of performing Work pursuant to the current Schedule for at least six (6) hours with a normal work force, and in the event that the normal work force is on a double shift, twelve (12) hours shall be used. There shall be no extension of time granted to Contractor for delay due to weather conditions, unless agreed to by Owner by written Change Order, which agreement shall not be unreasonably withheld.
- C. **Delay Caused by Owner or Others.** Should Contractor’s progress be interfered with or the completion of this Contract be prevented through failure of Owner to provide required services, or for any reason attributable to Owner, Special Subcontractors, its agents, or others, then in that event, Contractor will be entitled to an extension of time, day-for-day, within which to complete the Work, as reflected by Change Order.
- D. **Time for Claim Submission.** All claims for extension of time shall be made in writing to Owner no more than twenty (20) days after the occurrence of the delay;

otherwise they shall be waived. In the case of a continuing cause for delay, only one claim is necessary.

49. Independent Contractor.

- A. Independent Contractor.** Contractor hereby declares it is engaged in an independent business and agrees to perform the Work as an independent contractor with full responsibility for the control and direction of its employees. Contractor, in its performance of this Contract, has and hereby retains the right to exercise full control and supervision over the accomplishment of the Work. Contractor shall not be an agent, employee or servant for and may not bind Owner. This Contract is not intended to and shall not create a partnership of any kind or type. It is understood that Contractor is free to contract for similar services to be performed for others during the term of this Contract, subject to the conditions set forth herein.
- B. Payment of Taxes.** Contractor shall be solely responsible for the payment of each of its employee's compensation and benefits including employment taxes, any similar taxes associated with employment, withholding of federal, state, or local taxes imposed on wages, deductions for social security, contributions for unemployment compensation funds, and all other regulations governing such matters. Contractor further warrants that it will comply with all other applicable, federal, state or local laws or regulations applicable to Contractor as an employer regarding compensation, hours of work or other conditions of employment, including those applicable to minimum wage and overtime wages.
- C. Reporting Requirements.** All amounts paid by Owner to Contractor pursuant to this Contract will be reported as non-employee compensation by Owner to the I.R.S. at the end of each calendar year. Contractor agrees to complete and execute the Form W-9, "Request for Taxpayer Identification Number and Certification," upon the execution of this Contract. The Contractor represents that it is withholding federal and state income taxes, FICA, and FUTA taxes from the paychecks of all its employees who do work for Owner, its parent or any of its affiliates in all positions pursuant to this Contract. Contractor further agrees to furnish Owner upon request a certificate, or other evidence of proof of payment, or compliance with local, state, or federal laws covering contributions, taxes, and assessments imposed on wages and the employer.
- D. Waiver of Benefits.** Contractor's personnel shall not be entitled to participate in or receive benefits under any Owner's programs maintained for its employees, including, without limitation, life, medical and disability benefits, pension, profit sharing or other retirement plans or other fringe benefits. Nor shall Contractor personnel be entitled to any direct or indirect compensation or remuneration of any kind from Owner as a result of the performance of this Contract, except for Owner's obligation to pay the charges to Contractor provided for herein, and Contractor shall be responsible for all compensation of such Contractor personnel

and shall indemnify Owner for any claim by any Contractor personnel for such rights or benefits.

50. **Contractor's Personnel.** Contractor shall, upon Owner's request, furnish Owner with the names and addresses of its employees assigned to the Work. Owner, in its sole discretion, may require Contractor to remove such employees from the Job Site whereupon Contractor shall replace the person so removed with those of equal or higher standing regarding work experience and position.
51. **Improper Payments.** Contractor will not use any funds received under this Contract for illegal or otherwise improper purposes related to the Contract. Contractor will not pay any commissions, fees, or rebates to any employee of Owner nor favor any employee of Owner with gifts or entertainment of significant cost or value. If Owner has reasonable cause to believe that the provisions of the preceding sentences have been violated, Owner, its Representatives, or auditors may audit the records of Contractor, for the sole purpose of establishing compliance with such requirements. All costs of any such audit shall be the responsibility of Contractor.
52. **Alcohol and Drug Policy.** Contractor's employees, while on Owner's premises or engaged in Owner's Work, shall refrain from unauthorized consumption or possession of alcoholic beverages and the possession, sale, use or distribution of unauthorized drugs. Contractor's failure to comply with this Section will constitute a material breach of this Contract. Notwithstanding any other provision of this Contract, violation of this provision by Contractor personnel will: (i) result in immediate removal of Contractor employees from the Owner's premises, and (ii) constitute a material breach of this Contract. Contractor shall have the obligation to replace its employees with a suitable substitute or substitutes, within a reasonable time.
53. **Audit.** Contractor shall keep such books and records on a consistent basis and in accordance with generally accepted accounting principles (GAAP). These books and records shall readily disclose the basis for any charges or credits, ordinary or extraordinary, billed or due to Owner under this Contract and shall be made available for examination, audit and reproduction by Owner and its agents during the term of this Contract and for a period of two (2) years after the receipt by Contractor of Final Payment. When requested by Owner, the Contractor shall permit Owner's personnel or its duly authorized agent or representative access during normal working hours to the Contractor's personnel, property and records necessary to conduct the Owner's audit. In the event that the audit rights set forth in this Section conflict with any other terms of this Contract, this Section shall control. Contractor further agrees to include this right to audit clause in all subcontracts for services and materials furnished under the terms of this Contract, if any, entitling Owner to a right to inspect books and records to validate subcontractor charges. All costs of such audit(s) shall be the responsibility of the Contractor.
54. **Publicity.** Contractor shall not identify Owner nor publicize the fact that Owner is a customer of Contractor in any manner including, but not limited to, press releases,

articles, interviews, marketing materials, online materials, and speeches without first obtaining, for each separate instance of such publication, at least three (3) business days' prior written approval from Owner. The obligations of this Section shall survive the termination of this Contract.

55. Confidential and Proprietary Information.

- A. Confidentiality.** In the course of Contractor's rendering services hereunder, Contractor will or may acquire valuable trade secrets, proprietary data, and sensitive confidential including but not limited to written information identified as "confidential" by a legend to that effect and verbal information identified by Owner as "confidential" at the time of disclosure, with respect to Owner's business (collectively, "**Confidential Information**"). The parties hereto agree that such trade secrets, proprietary data and other Confidential Information include but are not limited to copyrights, inventions, models, processes, patents, and improvements thereon, Owner's business and financial methods and practices, pricing and selling techniques, file or data base materials, price lists, software listings or printouts, computer programs, lists of Owner's clients, client record cards, client files, credit and financial data of Owner's suppliers and present and prospective clients, and particular business requirements of Owner's present and prospective clients, as well as similar information relating to the parent, subsidiaries and affiliates of Owner.
- B. Return of Confidential Information.** Upon termination or expiration of this Contract for any reason, or upon request of Owner, Contractor shall return, or certify as destroyed, written material and other media containing any Confidential Information, together with any copies thereof. Failure by the Contractor to comply with this requirement shall be grounds for withholding any payment that may be due Contractor, except as need for Contractor's business records for the Project.
- C. Fiduciary Trust.** In addition, Contractor, on behalf of Owner, may develop a personal acquaintance with clients and prospective clients of Owner, its parent, subsidiaries and affiliates. As a consequence thereof, the parties hereto acknowledge that Contractor will occupy a position of trust and confidence with respect to Owner's affairs, products and services.
- D. Protection of Proprietary and Confidential Information.** Neither Contractor, nor its employees or consultants, during the term of this Contract or at any time thereafter, shall, without the express written consent of Owner, directly or indirectly communicate or divulge to, or use for its or their own benefit, other than as a contractor of Owner and to further the Owner's interests, or for the benefit of any other person, firm, association or corporation, any of Owner's, its parent's, subsidiaries' or affiliates', trade secrets, proprietary data or other Confidential Information, except that Contractor may disclose such matters to the

extent that disclosure is required (1) in the course of said relationship, or (2) to enable Contractor's personnel to render services hereunder.

56. **Assignment of Contract.** Contractor shall not assign, delegate or sublet this Contract or any part thereof, or any money due or any money to become due hereunder, without the prior written consent of Owner in each instance. Subject to the foregoing, this Contract shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Unless specifically provided in this Contract, none of the provisions of this Contract shall be enforceable by or for the benefit of any person or entity except the parties hereto and their successors and permitted assigns. Owner may assign this Contract. No assignment shall relieve Owner from any of its obligations hereunder unless specifically agreed to in writing by Contractor.
57. **Notices.** All notices required or permitted to be given under this Contract shall be in writing and shall be given by personal delivery, verified facsimile transmission, receipted delivery services, or by registered or certified mail, first class postage prepaid, return receipt requested, and for Contractor shall be delivered or addressed as appears on the Contract, and to Owner's Director at the Director's Office. Notice for all purposes under this Contract, regardless of the form in which given, shall be deemed given when received by the addressee of such notice.
58. **Litigation Costs; Attorneys' Fees.** The prevailing party in an action brought by either party to enforce the terms and conditions of the Contract shall be entitled to its reasonable costs of suit and expenses including reasonable attorneys' fees including costs and attorney fees upon appeal.
59. **Liquidated Damages.** In the event that Contractor fails to complete the Work within the specified time for Substantial Completion, or before the time extended in accordance with the Contract, Owner shall deduct from the monies due or to become due to Contractor under the Contract, liquidated damages in the amount set forth in the Contractor's specific Contract per day for each consecutive calendar day by which the time the Work is delayed beyond the date of Substantial Completion. Such liquidated damages shall not be considered as a penalty.
60. **Headings; Severability.** Headings in this Contract are for convenience only and shall not be used to interpret or construe the provisions of this Contract. If any provision of this Contract shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract shall remain in full force and effect, and the parties agree to negotiate, in good faith, substitute enforceable provisions that most nearly effect the parties' intent in entering into the Contract.
61. **Incorporation by Reference; Survival.** The Contract Documents referred to herein are hereby incorporated by reference into this Contract. All terms and conditions of this Contract, which by their nature extend beyond the terms hereof, shall survive acceptance, Final Payment, expiration, or earlier termination of this Contract.

62. **Waiver.** If, in one or more instances, either party fails to insist that the other party perform any of the terms of this Contract, such failure shall not be construed as a waiver by such party of any past, present, or future right granted under this Contract, and the obligations of both parties shall continue in full force and effect.
63. **Notice of Claims.** Contractor shall promptly notify Owner in writing of any claims, demands, causes of action, or suits and shall do all things required by Owner to protect Owner interests.
64. **Reference to Liens Shall Not be Construed to Create Right to a Lien.** No reference to liens or lien claims contained herein shall be construed to create or acknowledge any lien or any rights on the part of the Contractor or any subcontractor to file any sort of lien whatsoever against property of Owner and/or the Cherokee Nation.
65. **Binding Agreement.** The terms and conditions herein stated may not be changed on behalf of a party except by a written agreement signed by both parties. This Contract shall be binding on the legal representatives, successors, heirs and assigns of the parties.

**END OF CHEROKEE NATION PROPERTY MANAGEMENT'S
STANDARD CONSTRUCTION TERMS AND CONDITIONS**



Contractor Acknowledgement of Invoicing and Payment Terms and Conditions

The undersigned Contractor acknowledges receipt of Appendix 'B' of the Subcontractor Agreement entitled 'Cherokee Nation Property Management Standard Construction Terms and Conditions' and agrees to accept these duties, responsibilities and obligations while in the course of performance of this Agreement:

Section 18 (a) Invoicing and Payment

The Contractor's cost-to-date of labor and materials incorporated into the Work shall be paid monthly as the Work progresses less retainage of ten percent (10%), which shall be withheld and paid, without interest, upon Final Completion. All such payments shall be made no later than the 30th day of the month following the month in which the Payment Application is received.

Section 18 (c) Payment Applications

Contractor shall invoice Owner monthly in duplicate for Work completed and for materials stored on the site through the last day of the month on Owner's Contractor Progress Payment Request form. Each application for payment shall be due on or before the last day of each month. Each application shall be based on ninety percent (90%) of the labor and materials incorporated into the Work and of materials suitably stored at the site thereof up to at least the last day of the month, less the aggregates of previous payments, and shall be accompanied by a form of an executed Progress Payment Release-Unconditional.

Section 18 (i) Certificate for Payment

Owner will, within thirty (30) days after the receipt of Contractor's Progress Payment Request, make payment or notify Contractor of Owner's reason for withholding the Request, or portions of the Request. Receipt by Owner is defined to be delivery in person to Owner's Director at the Director's office located at 1102-B North 193rd East Avenue, Catoosa, Oklahoma 74015-0515. Payment is defined to be by Owner's mailing by first-class U. S. Mail a check for the amount of the Request for payment, subject to retention and adjustment as provided in the Contract Documents. If the pay date occurs on a Saturday, Sunday or holiday, Owner will make payment on the next business day. Contractor's Progress Payment Requests are to be dated the last day of the month as defined in other provisions of the Contract Documents.

Section 18 (j) Decisions to Withhold Payment

Owner may decline to make payment because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of any Progress Payment Request previously received and/or withhold payment to such extent as may be necessary to protect Owner for loss because of:

- (1) defective Work not remedied;
- (2) third party claims filed or reasonable evidence indicating the probable filing of such claims;
- (3) failure of Contractor to make payments properly to suppliers or subcontractors or for labor, materials or equipment;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (5) damage to Owner or another contractor or property of another;
- (6) reasonable evidence that the Work will not be completed within the time permitted for completion of the Project;
- (7) failure to carry out the Work in accordance with the Contract Documents; or
- (8) materially inaccurate or incomplete information provided with the Certificate of Payment.

SUBCONTRACTOR

By: _____

Typed Name: _____

Title: _____

Date: _____